

LEE A. MARZILLI  
OFFICIAL COURT REPORTER  
United States District Court  
1 Courthouse Way, Room 7200  
Boston, MA 02210  
(617) 345-6787

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
SHAWN CHANNELL				
By Mr. Callahan:	18			
By Mr. Schneider:		99		
By Mr. Callahan:			181	
By Mr. Schneider:				190

<u>EXHIBITS</u>	<u>RECEIVED IN EVIDENCE</u>
1-11, 13-20	96
22	146
23	199

P R O C E E D I N G S

THE CLERK: Court calls Civil Action 13-11530, United States v. Brian Mahoney. Could counsel please identify themselves.

MR. CALLAHAN: Patrick Callahan for the United States.

MR. SCHNEIDER: Michael Schneider, and with me, Jeffrey Harris for Brian Mahoney.

THE COURT: All right, thank you.

THE CLERK: You can be seated.

THE COURT: So you have a witness today?

MR. CALLAHAN: We do, your Honor. We have Dr. Shawn Channell who wrote the Risk Assessment Report and is going to give his opinion on whether Mr. Mahoney qualifies under 4246.

THE COURT: All right. And do you have a witness here today?

MR. SCHNEIDER: Yes, your Honor. We have Dr. Daniel Kriegman, who also wrote a report and filed it with the court.

THE COURT: All right, so I don't make these gentlemen come back a second time, I'm just trying to make sure of the scheduling. I know that you have a launched -- can you hear? Can you hear?

THE DEFENDANT: Yes.

THE COURT: Okay. I understand that there's been a *Daubert* challenge to the risk assessment tools. The motion to strike as delayed is denied. That said, I would like to hear

1 from the doctors. I don't know if they're essential. So I'd  
2 like to hear from the doctors on both sides, and then I'll make  
3 a decision about whether I need this.

4 MR. CALLAHAN: Okay, so, your Honor, we would be  
5 prepared then to go through the three risk assessment  
6 instruments.

7 THE COURT: You can, but I would also propose, so that  
8 we can get through all the witnesses, that we simply put the  
9 expert reports from both doctors in the record, maybe I don't  
10 know if you've premarked them already -- and I've read them  
11 both -- and then you can put on whatever direct you want and  
12 you can cross whatever you want, but at least it's in the  
13 record.

14 MR. CALLAHAN: We have discussed this before, your  
15 Honor, and Dr. Channell has actually two risk assessment  
16 reports. There's a December, 2013 addenda.

17 THE COURT: Yes.

18 MR. CALLAHAN: And counsel and I have discussed it.  
19 We have a number of government exhibits that we're moving in as  
20 stipulated to with two exceptions: a letter from the fellow  
21 inmate of Mr. Mahoney's as well as a phone call that was  
22 recorded on May 28 that we are prepared to play, and we have a  
23 keeper of the records in case the Court requires that. But  
24 those are the only two exhibits, and there are twenty in the  
25 government's exhibit binder, which you have a copy of.

1 THE COURT: Finish your sentence. The only two  
2 exhibits that are contested?

3 MR. CALLAHAN: That are contested.

4 MR. SCHNEIDER: And I would be objecting specifically  
5 to those two exhibits, but I'll raise my objections when the  
6 time comes.

7 THE COURT: Yes. We tried to do a research analysis  
8 of whether or not the Rules of Evidence apply. I believe that  
9 they do, but there's a dearth of case law. I at least will  
10 proceed on that basis unless you have case law that says that  
11 the Rules of Evidence do not apply.

12 MR. CALLAHAN: Your Honor, we're aware of one case,  
13 the *Fanning* case where the Rules of Evidence were deemed to  
14 apply to a 4246 hearing, and that was before Judge Gertner.  
15 That was an unopposed motion. I don't know whether the  
16 government needed Rules of Evidence, but it was an unopposed  
17 motion. Judge Gertner held that they applied.

18 There are other cases, and I can give the Court  
19 citations; *U.S. v. Wabot* where they said in a 4243 proceeding,  
20 which is very similar to this, where the Rules of Evidence  
21 didn't apply, and what they said was that -- and excuse me --  
22 and also *United States* --"

23 THE COURT: I'm not prepared to rule on it. Until I  
24 do, I'm going to apply them. And then if there's something,  
25 for example, that is critical -- I'm assuming this prisoner

1 letter would qualify as hearsay unless it falls into an  
2 exception -- I would take it de bene, and I would have to make  
3 that ruling once I've done the research.

4 MR. CALLAHAN: Okay. And the government would submit  
5 that that is just one of the types of things that an expert  
6 under Rule 703 would reasonably rely on and would be permitted  
7 to support his opinion.

8 THE COURT: Excuse me. That may be true or not, but  
9 what isn't true is it get independently admitted.

10 MR. CALLAHAN: Understood, your Honor.

11 THE COURT: Okay.

12 MR. SCHNEIDER: And I should make it clear, what I'm  
13 not objecting to is, under Rule 702, the things that the  
14 government is submitting is submitting as things that the  
15 government's expert has relied on. I'm not acquiescing to  
16 their substantive admissibility, but it's something that  
17 Dr. Channell has reviewed. These aren't things that he can't  
18 personally authenticate.

19 THE COURT: Right, right. So the issue would be  
20 whether or not you're seeking to admit them for the substance,  
21 or whether you're seeking to admit them just as something he  
22 looked at. And then typically you don't admit them.

23 But, in any event, at least right now, you may want to  
24 sort of hand up the cites and give those to Mr. Schneider.  
25 It's not something that was not briefed. I didn't ask for

1 briefing on it. It occurred to me this morning, and we did a  
2 quick research project, and there was very little case law on  
3 it.

4 MR. CALLAHAN: Certainly, I can get the citation to  
5 Mr. Schneider.

6 MR. SCHNEIDER: I would just add for the record, the  
7 only case that I found on point is *United States v. Woods*, 970  
8 F. Supp. 711 -- it's a District of Minnesota 1997 case -- that  
9 also says, "The issue is not free from doubt, but the Court  
10 finds that the Federal Rules of Evidence are applicable to this  
11 proceeding." That was also a 4246 proceeding.

12 THE COURT: All right. And you're saying you found  
13 something called *Wabol*?

14 MR. CALLAHAN: *Wabol*, your Honor. It's 2006 Westlaw  
15 3775978, where the admissibility of evidence was not limited by  
16 the Federal Rules of Evidence in a 4243 case, which is a  
17 similar standard.

18 THE COURT: And who was the judge on that case? Was  
19 it in this district?

20 MR. CALLAHAN: It was not. It was in the Northern  
21 District of Indiana, your Honor.

22 THE COURT: So very little case law. Okay, go ahead.

23 MR. CALLAHAN: So we would call Dr. --

24 MR. SCHNEIDER: I apologize. I have just a couple of  
25 very short preliminary things. The first is, I know we made a

1 request through the courtroom clerk as to whether or not  
2 Mr. Mahoney can wear a suit and tie today. He does have a suit  
3 and tie available that his brothers in the back have brought  
4 for him, and I just raise that issue. I know that there may be  
5 some issues with the Marshal's Office, but I know that he would  
6 very much like to dress like a human being.

7 THE COURT: Well, I'm not going to stop now. It's the  
8 first I've heard of it, in terms of I didn't know it hadn't  
9 been worked out. I'm not going to take the time now.

10 (Discussion between the Court and Clerk.)

11 THE COURT: Well, it's not worth taking the time now.  
12 If we go into a second day, I'll hear argument on it.

13 MR. SCHNEIDER: And then the only other issue that I  
14 just want to clarify is, Dr. Kriegman is in the courtroom. I  
15 assume it would be beneficial to the Court for him to remain in  
16 the court, and he's an expert.

17 THE COURT: That's fine. Both sides should hear each  
18 other.

19 MR. SCHNEIDER: Yes. Does your Honor want the reports  
20 formally filed now, or it doesn't matter?

21 THE COURT: It doesn't matter. I mean, don't I have  
22 it in this binder?

23 MR. SCHNEIDER: Yes, you do.

24 MR. CALLAHAN: Yes, your Honor.

25 THE COURT: Okay. And I'm just going to deem

1 everything admitted except which two exhibits?

2 MR. CALLAHAN: The two, and they're tabbed, your  
3 Honor, Exhibits --

4 THE COURT: What are the two exhibits that are not  
5 agreed to?

6 MR. CALLAHAN: Tab 12, so there's no Exhibit 12 as of  
7 right now, your Honor. I just have not put a sticker, but it's  
8 under Tab 12 in front of you. That is the letter from the  
9 fellow inmate.

10 THE COURT: I have that in here.

11 MR. CALLAHAN: You do have that in there. It's not  
12 stickered with a -- we are not marking that with an exhibit  
13 sticker just yet, but we will seek to. And then Tab 20, which  
14 is the May 28, 2014 phone call. And at this point, we haven't  
15 heard what the objection is to that phone call being played.  
16 It is Mr. Mahoney speaking on the phone. We have a keeper of  
17 the records if your Honor deems it necessary, and Dr. Channell  
18 has also listened to that phone call.

19 THE COURT: Well, if that's his language, what's the  
20 issue?

21 MR. SCHNEIDER: Well, there are a couple of things,  
22 your Honor. First of all, we received it right after the close  
23 of business yesterday for the first time, so that's kind of of  
24 some concern, especially since we had discussed discovery would  
25 be produced by May 15, 21 days in advance of the proceeding.

1 And then the other thing is, I guess there is an authentication  
2 issue. I have no doubt that the keeper of the records can  
3 authenticate it as something that comes from the institution,  
4 but in terms of who the voices are or who's speaking to whom,  
5 I'm not sure that that can be determined just from the face of  
6 the transcript.

7 THE COURT: Well, if there's an agreement on the fact  
8 that it is an authentic tape, can we let the keeper of the  
9 records go?

10 MR. SCHNEIDER: Yes. I have no problem with that.

11 THE COURT: So can he identify the voice?

12 MR. CALLAHAN: He cannot identify the voice.

13 Dr. Channell will be able to identify the voice. And, also, I  
14 believe at one point in the call Mr. Mahoney identifies himself  
15 because it's a collect call and he has to say who he is.

16 THE COURT: And why was it produced last night?

17 MR. CALLAHAN: Because it happened on May 28. It was  
18 uncovered at the end of the day on June 2. And it was not  
19 produced after the close of business. It was produced in the  
20 morning. It was produced around 11:30. I sent an e-mail with  
21 the actual audio to Mr. Schneider at around 11:30 yesterday  
22 morning. That was as soon as I received it. And then I sent a  
23 transcript of it that we had done as quickly as we could last  
24 night at 5:40.

25 THE COURT: Okay, well, I'm inclined to allow it in if

1 it's authenticated in terms of what the voice is, but if  
2 there's any prejudice from getting it at the last minute, we  
3 could have a supplemental response to it or whatever so that it  
4 isn't popped on Mr. Schneider in a way that it was hard to  
5 prepare. You know, he may have been in court. I mean, it's  
6 hard to get it the day before.

7 MR. CALLAHAN: Right, your Honor, and we didn't get it  
8 the day before. The Bureau of Prisons couldn't get it to us  
9 until -- it was only located on the 2nd, on June 2, and it was  
10 a call that took place on the 28th.

11 THE COURT: The letter is a completely different  
12 thing. I think you may have to subpoena in that inmate. Even  
13 if I said that the Rules of Evidence didn't apply, I haven't  
14 read the letter, but I'm assuming it's those comments that were  
15 so troubling.

16 MR. CALLAHAN: That's correct, your Honor.

17 THE COURT: And that were reported on. If you want me  
18 to take them on the substance of it, you'll have to bring him  
19 in.

20 MR. CALLAHAN: Okay, your Honor, understood. Thank  
21 you.

22 THE COURT: Okay. Are you planning to do that?

23 MR. CALLAHAN: We were not intending to do that today,  
24 your Honor.

25 THE COURT: But you might if I exclude the letter, or

1     you're not going to?

2             MR. CALLAHAN: We would consider what the result would  
3     be, and then I would have to consult with BOP agency counsel  
4     before doing that.

5             THE COURT: All right.

6             MR. SCHNEIDER: Does your Honor anticipate brief  
7     opening statements?

8             THE COURT: If you'd like to. I've read both reports.  
9     I don't need them, I think.

10            MR. SCHNEIDER: I would just like to make a very brief  
11     statement, if I could.

12            THE COURT: Of course. Do you want to say anything  
13     briefly?

14            MR. CALLAHAN: Yes, your Honor. The overall goal of  
15     the Bureau of Prisons is to make sure that Mr. Mahoney gets the  
16     treatment and the medication he needs and that he's put in a  
17     position to succeed when he's released to the community. That  
18     time has not come yet. He suffers from a mental disease or  
19     defect. That's agreed upon by both experts in this case, and  
20     much of this is agreed upon by both experts in this case. And  
21     that mental disease or defect causes a substantial risk that  
22     his release would result in bodily harm to others.

23            And we're going to hear about agreed-upon facts such  
24     as an extensive criminal history, a presentation that is  
25     pressured at constantly presenting in an agitated manner.

1 We're also going to hear that he's had, you know, incredibly  
2 troubling relationships with the women in his life that have  
3 resulted in screaming, fighting, threatening; a long list of  
4 criminal convictions, almost a dozen involving assault, assault  
5 and battery, assault with a dangerous weapon, including knives,  
6 pliers, and going back farther, assault with intent to rape  
7 involving the use of a knife as well.

8 And we think that Dr. Channell will explain to your  
9 Honor how Mr. Mahoney's mental illness affects his behavior,  
10 affects his violence, how he doesn't have insight into that,  
11 how he doesn't comply with his medication. And after going  
12 through the instruments, we'll also show that his release at  
13 this point in time, because of his mental disease or defect,  
14 causes a substantial risk of bodily harm if he were to be  
15 released today.

16 THE COURT: Thank you.

17 MR. SCHNEIDER: Just very briefly, your Honor,  
18 obviously you're going to be hearing from the two experts in  
19 this case, Dr. Channell and Dr. Kriegman, and you're going to  
20 hear two very different assessments, specifically assessments  
21 with respect to the risk of future dangerousness that  
22 Section 4246 requires.

23 It is uncontested that Mr. Mahoney suffers from  
24 bipolar disorder. He's been aware of that. He's been aware of  
25 it for years. He knows that he needs medications to manage it

1 and that he needs counseling and treatment, and he's gone along  
2 with that for the most part for many years.

3 You are going to hear certainly about a 55-year-old  
4 man who's exuberant, who's animated, who's loud, who says  
5 things that people take as sounding very aggressive, sounding  
6 scary, as sounding threatening, and in some cases the courts  
7 have found those to be in fact threats or assaults. And you'll  
8 hear about a number of prison incidents, but I do want your  
9 Honor to remember the context in which those incidents occur.  
10 They occur behind the walls in a scary federal prison where  
11 things are really not like they are in the outside world.

12 You're going to hear of a man with a record. He does  
13 have a criminal history, and you're going to hear about  
14 thirty-five, and you've seen the reports refer to them, but  
15 very few of them really involve any kind of serious assaults.  
16 Almost all of them are misdemeanors or district court cases.  
17 In his entire record, when you look carefully at it, there is  
18 only one major felony conviction. That was a 1983 case when  
19 Mr. Mahoney was 24 years old. That's 30 years ago. So I would  
20 suggest that we look very carefully at the criminal record  
21 because it's not nearly as extensive or not nearly as serious  
22 and portent of future dangerousness as one might kind of  
23 initially think when one takes an initial look.

24 You're going to hear about the three instruments that  
25 Dr. Channell seems to rely quite heavily on and what their

1 purposes are, how they were scored, the level of subjectivity  
2 involved in making some of these determinations. And you'll  
3 hear about the fact that they may be great research tools with  
4 high levels of scientific or statistical significance, but that  
5 ultimately that they are of very low predictive validity. And  
6 the danger is, if you go down that road, we're entering a road  
7 where there are many false positives, and that's simply  
8 something that the 4246 "clear and convincing evidence"  
9 standard, you know, does not allow.

10           You'll also hear that people with bipolar disorder,  
11 most of whom -- and there are many in the United States -- can  
12 live a fine life controlling it with therapy and medication,  
13 that they don't require hospitalization; and that for someone  
14 like Mr. Mahoney, how he does outside the prison wall is really  
15 a function of the kind of family support that he has, the  
16 availability of a living situation, his willingness and  
17 eagerness to seek counseling and medications, and things of  
18 that order.

19           I do want to just point out because I know it's  
20 something -- there are a number of things that certainly  
21 agitate it Mr. Mahoney. He has a very strong sense of justice  
22 and fairness, and there are certain things that kind of feel --  
23 there really are a number of both perceived and also very real  
24 injustices that he feels, and I think those are things that  
25 have, you know, led to some of these incidents in the past.

1 But I would suggest that given the kind of situation that he  
2 seeks when he gets out, that he could very well kind of control  
3 any sort of problematic behaviors.

4 Mr. Mahoney was picked up in February of 2011 --

5 THE DEFENDANT: November 5, 2010.

6 MR. SCHNEIDER: November 5, 2010, excuse me, and he's  
7 been in custody for over 43 months. Originally it was on a  
8 federal charge, as your Honor well knows, out of New Hampshire,  
9 a nonviolent felony where the charges ended up getting  
10 dismissed. I would suggest, at the end of the day, although we  
11 may come into these proceedings with a certain idea of where  
12 this thing should go, I know your Honor certainly will keep an  
13 open mind, and I would suggest that at the end of this  
14 proceeding, the government will not be able to prove by the  
15 very high "clear and convincing evidence" standard that  
16 Mr. Mahoney --

17 THE COURT: Can I just stop you there. So you're  
18 thinking I can make a ruling at the end of today without going  
19 through a *Daubert* challenge?

20 MR. SCHNEIDER: Well, no, I would suggest that your  
21 Honor will hear the *Daubert* challenge as part of our attack on  
22 the instruments. My understanding was that your Honor was  
23 going to ask for post-hearing memos on the *Daubert* issue.

24 THE COURT: I see, so that's how you think.

25 Procedurally, you were planning on putting on that attack. I

1 had said to the government, because it came up so last minute,  
2 that I would give them additional time to respond, and that may  
3 or may not be live evidence or it may be briefing.

4 MR. SCHNEIDER: I certainly plan on asking  
5 Dr. Channell and Dr. Kriegman about the validity of the  
6 instruments, which goes to the *Daubert* challenge.

7 THE COURT: All right, and then we'll see what you  
8 want to do afterwards. I won't prejudice you on that. I do  
9 know that I was the first judge, to my knowledge, who dealt  
10 with the challenges to the instruments in the context of sexual  
11 dangerousness, and it took days, I mean, days of evidentiary  
12 hearings and briefings. It was huge. So it's a complicated  
13 matter, and let's just see where this goes to see what path we  
14 should go down. I'm not even sure as I was looking at them  
15 that I looked at those three instruments. I think I looked at  
16 something else. Do you know?

17 MR. CALLAHAN: The three instruments that are in this  
18 report are the three that were subject to the *Daubert*  
19 challenge, your Honor: the PCL-R, the HCR-20, and the VRAG.

20 THE COURT: But did I look at those, do you know, in  
21 the sexual dangerousness field?

22 MR. CALLAHAN: Not that I'm aware of, your Honor, no.

23 THE COURT: I think they're different.

24 MR. SCHNEIDER: So your Honor is talking about the  
25 *Jeffrey Shields* case.

1 THE COURT: Yes.

2 MR. SCHNEIDER: And I believe your Honor would have  
3 been looking, if anything, at the SORAG and the Static-99, I  
4 think was the focus of your Honor's attention.

5 THE COURT: I think that that's right, so I don't  
6 think it's something I've look at before. I've certainly seen  
7 the first one, but I don't know if I've seen the revised one,  
8 it says. So it's a big deal, and let's just see where we need  
9 to go, and I don't have to make that decision now. All right.

10 MR. CALLAHAN: So, your Honor, we will be putting on  
11 evidence. We just didn't want to open the door to its validity  
12 by asking a lot of questions about it, but if your Honor wants  
13 to hear what we have to say on that, we will present it.

14 THE COURT: Well, let me just say this: He's  
15 challenged the validity, and your doctor has relied on it.  
16 What's not clear to me is whether I need to rely on it. I  
17 don't know how close a call it is. I believe the standard of  
18 proof is clear and convincing evidence.

19 MR. CALLAHAN: That's correct, your Honor.

20 THE COURT: So if there's a challenge to the validity,  
21 then I need to decide what to do with that, whether that's  
22 essential to my decision.

23 All right, why don't you call the doctor, and we'll  
24 get going.

25 MR. CALLAHAN: Thank you, your Honor. The United

1 States calls Dr. Shawn Channell.

2 SHAWN CHANNEL

3 having been first duly sworn, was examined and testified as  
4 follows:

5 THE CLERK: Could you please state and spell your name  
6 for the record.

7 THE WITNESS: Yes. It's Shawn Channell, S-h-a-w-n  
8 C-h-a-n-n-e-l-l.

9 MR. CALLAHAN: Your Honor, if I may, could I hand  
10 Dr. Channell a copy of the exhibit book so he can refer to it?

11 THE COURT: Sure.

12 DIRECT EXAMINATION BY MR. CALLAHAN:

13 Q. Good morning, Dr. Channell. Could you introduce yourself  
14 to the Court, please.

15 A. Good morning. I'm Dr. Shawn Channell. I'm a forensic  
16 psychologist employed at the Federal Medical Center in Devens,  
17 Massachusetts.

18 Q. As a forensic psychologist at Devens, were you asked to  
19 evaluate the respondent, Mr. Brian Mahoney?

20 A. Yes, I was.

21 Q. For what purpose?

22 A. Initially he was referred for restoration of competency  
23 after being found not competent to stand trial, and that was my  
24 initial contact with Mr. Mahoney.

25 Q. Did you subsequently evaluate him to determine whether he

1 had a mental disease or defect, as a result of which his  
2 release would cause a substantial risk of bodily harm or  
3 serious property damage to another?

4 A. Yes, I did.

5 Q. And did you arrive at a conclusion regarding that  
6 evaluation and that question?

7 A. Yes, I did.

8 Q. And what was your conclusion?

9 A. My conclusion was that he suffers from bipolar disorder,  
10 and as a result of his mental illness, his release would pose a  
11 substantial risk of bodily injury to another person.

12 Q. Now, could you tell us where you attended college.

13 A. I did my undergraduate at West Virginia University in  
14 psychology. I have my master's degree and Ph.D. from Western  
15 Michigan University in clinical psychology.

16 Q. Are you a licensed psychologist?

17 A. Yes. I'm licensed in the state of Massachusetts.

18 Q. For how long have you been licensed?

19 A. I've been a licensed psychologist since approximately  
20 2002. Initially I was licensed in California and more recently  
21 here in Massachusetts.

22 Q. Are you board-certified?

23 A. Yes. I'm board-certified in forensic psychology by the  
24 American Board of Professional Psychology.

25 Q. Do you do any teaching?

1 A. Yes. I teach graduate-level courses at the Massachusetts  
2 School of Professional Psychology in Newton.

3 Q. And for how long have you done that?

4 A. Four years.

5 Q. Prior to becoming a forensic psychologist at Devens, can  
6 you tell us where you worked and what you did.

7 A. I did my internship at the Federal Medical Center in  
8 Rochester, Minnesota. After that, I was a staff psychologist  
9 at the Metropolitan Correction Center in San Diego, California.  
10 Then I went to the federal correctional institution in Waseca,  
11 Minnesota, where I worked as a forensic psychologist, and then  
12 I transferred out here to FMC Devens.

13 Q. What were your responsibilities at those facilities prior  
14 to arriving at Devens?

15 A. Well, at FMC Rochester I was a pre-doctoral psychology  
16 intern. In San Diego I was a staff psychologist. I primarily  
17 did treatment, screenings, psychological testing, that type of  
18 thing. And then both at Waseca and at Devens, I've been a  
19 forensic psychologist, where my primary duties are conducting  
20 evaluations of competency to stand trial and criminal  
21 responsibility.

22 Since I arrived at Devens since 2006, I have chaired our  
23 institution's risk assessment panel, which reviews inmates who  
24 are civilly committed under 4243 or 4246, as well as screening  
25 inmates who are currently inpatient at the hospital and have an

1 upcoming release into the community. For the last three years  
2 I've also been doing the majority of our competency restoration  
3 cases.

4 Q. What role do you play in the risk assessment panel?

5 A. I chair the panel.

6 Q. And what does a risk assessment typically involve under  
7 the 4243 or 4246 scheme that you just described?

8 A. Well, it would require a review of the information  
9 pertaining to an individual's background, legal documents,  
10 medical records, interviews with the individual being examined.  
11 Often we'll use risk assessment instruments that are designed  
12 to assist in risk assessment, so there's a lot of review of  
13 records. Also taking into consideration how the individual is  
14 presenting, both during an interview and outside of the  
15 interview in the institution, and then ultimately arriving at a  
16 determination on whether or not they either continue to pose a  
17 risk, if they're already committed, or if they would pose a  
18 risk if released, if they're not yet committed.

19 Q. How many times have you evaluated inmates who are either  
20 coming up for release or who are found not restorable?

21 A. Over 150 times.

22 Q. And of those, how many did you petition for civil  
23 commitment?

24 A. We've petitioned for approximately thirteen civil  
25 commitments during the time that I've been at Devens.

1 Q. Have you testified in Federal Court before, Dr. Channell?

2 A. Yes, I have.

3 Q. How many times?

4 A. I've testified about fifty-five times in a number of  
5 different districts throughout the United States in Federal  
6 Court.

7 Q. Have you testified in federal dangerousness hearings  
8 pursuant to either 18 U.S.C. 4243 or 18 U.S.C. 4246?

9 A. Yes, approximately twenty times.

10 Q. Has your opinion or part of your opinion ever been  
11 excluded, a *Daubert* challenge?

12 A. No, it hasn't.

13 THE COURT: Have any of those cases involved  
14 challenges to the risk assessment tools?

15 THE WITNESS: No, your Honor.

16 Q. When did you first meet Mr. Mahoney at Devens Federal  
17 Medical Center?

18 A. Actually, let me correct that last statement. There was  
19 one -- there was a case fairly recently where there were  
20 some -- there was a challenge to the risk assessment  
21 instruments, although the case never actually went to a  
22 hearing. We didn't have a *Daubert* hearing or a commitment  
23 hearing in that case.

24 THE COURT: So there was no judicial opinion that you  
25 know of?

1 THE WITNESS: There was no judicial opinion, no.

2 Q. When did you first meet Mr. Mahoney at Devens Medical  
3 Center?

4 A. I first met with Mr. Mahoney in August of 2012.

5 Q. And how many times have you met with or interviewed  
6 Mr. Mahoney in the course from August, 2012, until today?

7 A. I've met with him a number of times. As far as formal  
8 interviews, I've met with him approximately ten times over the  
9 last two years for probably around seven hours in total.

10 Q. And in addition to meeting with him, have you reviewed  
11 records relating to him?

12 A. Yes. I've reviewed legal documents, a number of filings  
13 that Mr. Mahoney has made, also a number of correspondence that  
14 he sent to the court or to me personally, audio recordings of  
15 his competency hearings, transcripts of his prior hearings,  
16 medical records, the prior competency evaluations which have  
17 been conducted in his case. I've reviewed two phone calls that  
18 he's made. I testified at a competency hearing where he was  
19 present. I've reviewed a number of incident reports in  
20 relation to his case, and I've talked to a number of  
21 individuals within FMC Devens who have interacted with  
22 Mr. Mahoney, as well as his prior attorneys and the Assistant  
23 U.S. Attorney who is assigned to his commitment -- I'm sorry --  
24 his competency criminal case. So I've reviewed quite a bit of  
25 information and have also spent a fair amount of time with

1 Mr. Mahoney.

2 Q. In addition to that, are you regularly updated on  
3 Mr. Mahoney's status or his progress at Devens Federal Medical  
4 Center?

5 A. Yes. I tend -- we have a daily morning meeting basically  
6 where we talk about the individuals who are currently being  
7 placed at FMC Devens at the psychiatric facility, and I receive  
8 updates on how he's doing there. And I also review the medical  
9 record, the electronic medical record that we keep on the  
10 patients.

11 MR. CALLAHAN: Your Honor, at this point the  
12 government offers Dr. Channell as an expert in the field of  
13 forensic psychology sufficient for him to testify as to whether  
14 or not Mr. Mahoney has a mental disease or defect and whether  
15 his release would cause a substantial risk of harm, bodily harm  
16 to others or serious property damage.

17 MR. SCHNEIDER: I have no objection to Dr. Channell  
18 being qualified as a forensic psychologist with competency to  
19 testify.

20 THE COURT: Yes, I qualify him as an expert. He may  
21 render an opinion.

22 MR. CALLAHAN: Thank you, your Honor.

23 Q. In terms of documentation, approximately how many pages  
24 did you review to prepare the two reports that are marked as  
25 Exhibit 1 and 2 in the binder in front of you, Dr. Channell?

1 A. I believe over 1,500 pages.

2 Q. Did you also listen to audio recordings of various  
3 hearings that Mr. Mahoney attended or partook in?

4 A. Yes, I did.

5 Q. Did you reach a conclusion as to Mr. Mahoney's present  
6 psychiatric condition?

7 A. Yes, I did.

8 Q. And what did you conclude?

9 A. That he meets the diagnostic criteria for Bipolar I  
10 disorder.

11 Q. Okay, anything else?

12 A. He also meets the criteria for antisocial personality  
13 disorder and cannabis use disorder.

14 Q. I'd like to take those in order. What is bipolar  
15 disorder, and how does Mr. Mahoney meet the criteria for that?

16 A. Bipolar disorder is a mood disorder that's characterized  
17 by a history of manic episodes. And manic episodes are  
18 characterized by symptoms such as rapid speech, irritability,  
19 an increase in behavior which would possibly be detrimental to  
20 the individual; for example, aggressive behavior, drug use,  
21 those types of things. And Mr. Mahoney has a history of manic  
22 episodes as well as fairly chronic hypomania, which while not  
23 being quite as extensive as a full manic episode, is also  
24 characterized by an abnormally elevated mood or irritability,  
25 as well as the other characteristics that I described.

1 Q. You also said Mr. Mahoney had a diagnosis of antisocial  
2 personality disorder. Can you tell us what that is and what it  
3 is about Mr. Mahoney's presentation that meets that criteria,  
4 in your view.

5 A. Yes. Antisocial personality disorder is basically a  
6 longstanding pattern of disregard for or violation of the  
7 rights of others, and that would be characterized by a number  
8 of different characteristics, one of which would be repeated  
9 arrests, another being deceitfulness, impulsivity,  
10 irritability, aggressiveness, and lack of remorse for one's  
11 prior behavior.

12 Q. Does Mr. Mahoney's criminal history inform your opinion as  
13 to his diagnosis of antisocial personality disorder?

14 A. Yes. That's one criteria of antisocial personality  
15 disorder is a pattern of repeated arrests or criminal behavior.

16 Q. And what types of repeated arrests or criminal behavior  
17 would inform that, that Mr. Mahoney has been either arrested or  
18 convicted of?

19 A. Well, with regard to a diagnosis of antisocial personality  
20 disorder, it could be, you know, really any type of arrest that  
21 would be a repeated pattern. I mean, what you're looking at  
22 primarily is the rule-breaking or law-breaking component that's  
23 involved in being arrested. Certainly he has a number of  
24 arrests in relation to assault charges, which also plays into  
25 the history of aggressiveness, which is a characteristic of

1 antisocial personality disorder as well.

2 Q. And does he also have a history of convictions relating to  
3 larceny or knowingly receiving stolen property, and do those  
4 have any impact or do they inform your opinion in any way as to  
5 antisocial personality disorder?

6 A. Yes. Basically he has what's often referred to as  
7 "criminal versatility," meaning that he commits a wide variety  
8 of offenses that are not necessarily one type of offense but  
9 involve offenses that involve violence, as well as property  
10 offenses and other types of offenses like that.

11 THE COURT: Let me ask, in your report you refer to  
12 charges of this or charges of that. Did you mean convictions,  
13 or he was just charged?

14 THE WITNESS: If I referred to it as a charge, it was  
15 a charge unless I otherwise indicated he was convicted of it.

16 THE COURT: So you relied on charges regardless of  
17 whether or not there was a conviction?

18 THE WITNESS: I don't know that I would say I relied  
19 on them. It's certainly information that I provided in the  
20 report that those were charges. Primarily what I rely on as  
21 being a documented clear case of violence, for example, would  
22 be a conviction.

23 Q. And could I ask maybe just to follow up on that,  
24 Dr. Channell, was he actually convicted of crimes such as  
25 larceny, larceny over, knowingly receiving stolen property?

1 Was he charged and convicted of those?

2 A. Yes.

3 Q. Was he also charged and convicted with assault-type  
4 offenses, including assault with a dangerous weapon, assault  
5 and battery, assault with intent to rape? Was he charged and  
6 convicted of those crimes?

7 A. Yes, he was convicted as far as I'm aware, based on the  
8 criminal history that I reviewed, of approximately a dozen  
9 violent offenses involving assault.

10 Q. You also mentioned that he qualifies for a diagnosis of  
11 cannabis dependence. What is the criteria for that, and how  
12 does Mr. Mahoney meet it, in your view?

13 A. Well, he had reported to me that he began using marijuana  
14 at a fairly young age and had used it regularly throughout his  
15 life on a daily basis up until his arrest for the instant  
16 offense back in 2011, I believe.

17 Q. How many times daily was he using it, sir?

18 A. I believe he told me two to three times a day.

19 MR. SCHNEIDER: Objection, your Honor. Just the term  
20 "instance offense," there are no pending charges.

21 THE COURT: Right. That just was a misstatement.

22 Q. And, I'm sorry, Dr. Channell, in terms of the frequency of  
23 his use prior to being arrested in late 2010, how often was he  
24 using cannabis daily?

25 A. I believe he told me two to three times a day every day.

1 Q. Aside from the diagnosis that you are offering here today  
2 about Mr. Mahoney's mental disease or defect, can you describe  
3 his mental health history going back ten years and the other  
4 evaluators who have concluded that he suffers from a mental  
5 disease or defect?

6 A. Yes. He's -- well, when I initially interviewed him with  
7 regard to his history, he reported that he had experienced  
8 hyperactivity as a child, although he was never formally  
9 diagnosed with ADHD or any type of hyperactive disorder that  
10 I'm aware of. The first mental-health-related issues that I'm  
11 aware of were in the late '70s when he attempted suicide by  
12 cutting his fingers after he'd had a breakup with a girlfriend.  
13 And the first time that he presented for mental health  
14 treatment that I'm aware of was when he was 30 years old, and  
15 what he reported to me was that he had been told he had rapid  
16 speech and that his demeanor was overbearing. And that  
17 prompted him to seek mental health treatment, and he was  
18 prescribed antidepressant medication at that time, although he  
19 didn't take it for very long.

20 From 1989 to '94 he was participating in counseling, and  
21 that was court ordered. It was part of his sentence that he  
22 participate in treatment while he was in the community. And  
23 then in '96 he was prescribed Valium, which is a benzodiazapine  
24 medication, for the first time; and since then, he's taken some  
25 type of benzodiazapine fairly consistently, whether it be

1 Valium or Xanax or Klonopin.

2 He was at MCI Concord in 2008 and 2009, and while he was  
3 there, they diagnosed him with ADHD, generalized anxiety  
4 disorder, mood disorder NOS, and a personality disorder called  
5 "borderline personality disorder." And while he was there, he  
6 was prescribed Klonopin, which is also a benzodiazapine, and an  
7 antidepressant.

8 After he got out, he was taking another antidepressant,  
9 Wellbutrin, and Adderall, which is medication for attention  
10 deficit hyperactivity disorder, but he was not compliant with  
11 those medications and didn't take them very long.

12 In 2009 he went to Avis Goodwin, and while he was there he  
13 was put on Xanax and Seroquel, which have been medications that  
14 he's fairly consistently taken since that time, either Xanax or  
15 some other type of benzodiazapine and the Seroquel.

16 Q. While he was at Avis Goodwin, was he given an official  
17 diagnosis of bipolar disorder?

18 A. Yes. That's the first time I'm aware of that he was  
19 diagnosed with bipolar disorder, and he was actually diagnosed  
20 with bipolar disorder with psychotic features. It was around  
21 that time that he was noted to really begin perseverating on  
22 his requirement that he register as a sex offender and  
23 documentation which was related to him being a sex offender,  
24 and that was known to be a significant preoccupation during the  
25 time that he was treated there.

1 THE COURT: So what drug was it that he was taking for  
2 the bipolar?

3 THE WITNESS: He was taking Seroquel. It's primarily  
4 an antipsychotic, but it is also approved for use as a  
5 treatment of bipolar disorder.

6 THE COURT: And is that the first time he received  
7 drugs specifically for the bipolar?

8 THE WITNESS: I believe it was. I think prior to  
9 that, all he had taken were antidepressant medications.

10 THE COURT: And how did he respond to the Seroquel?  
11 Was it flattening out his bipolar cycles?

12 THE WITNESS: Well, as far as I can tell based on the  
13 record, he's continued to, you know, present as fairly  
14 hypomanic or manic even while on the Seroquel. In fact, while  
15 he was at FMC Devens, his psychiatrist prescribed him lithium  
16 in addition to the Seroquel because the Seroquel was  
17 inadequately controlling his manic and hypomanic symptoms.

18 THE COURT: And did the lithium control it?

19 THE WITNESS: He didn't take it consistently for long  
20 enough for us to really know what type of effect it had on his  
21 presentation.

22 Q. When he was being held at Strafford House of Corrections  
23 in early 2011, what features or what mental disease was he  
24 diagnosed with there?

25 A. There they diagnosed him with depressive disorder or

1 depressive episode with a rule-out of bipolar disorder, and  
2 also features of antisocial personality disorder.

3 Q. Did there ever come a time where he reported a history of  
4 hearing voices telling him to do certain things?

5 A. He has in the past on a few occasions reported that he was  
6 hearing voices. I don't know that he said they were telling  
7 him to do things, but I know he has reported hearing voices.

8 Q. In 2011, was he evaluated by any evaluators at FMC Devens?

9 A. Yes. That was the first time he was sent to FMC Devens,  
10 and he was evaluated by Dr. Kissin for competency to stand  
11 trial.

12 Q. And did she diagnose him with any mental disease?

13 A. She diagnosed him with Bipolar II disorder.

14 THE COURT: What's the difference between Bipolar I  
15 and Bipolar II?

16 THE WITNESS: Bipolar II would be a type of bipolar  
17 disorder that is only characterized by hypomanic symptoms and  
18 not by manic episodes, which would be considered a more severe  
19 type of mood disorder.

20 THE COURT: Which one is more severe?

21 THE WITNESS: Mania is more severe than hypomania.  
22 Hypomania basically means under-manic, less than manic, so  
23 hypomanic symptoms are less detrimental and less pervasive than  
24 full-blown manic episodes.

25 THE COURT: So Dr. Kissin thought he was less

1 seriously mentally ill than the prior diagnosis?

2 THE WITNESS: I suppose that's one way to put it, yes.  
3 Bipolar II disorder is less severe than Bipolar I disorder.

4 Q. Was Mr. Mahoney later evaluated by another physician at  
5 FMC Devens?

6 A. At FMC Devens?

7 Q. I'm sorry. While he was the a FMC Devens, was he  
8 evaluated by another physician?

9 A. At that point in time? Yes, he was.

10 Q. Who was that?

11 A. That was his treating psychiatrist. I don't recall who it  
12 was at that time. And their diagnosis was bipolar disorder,  
13 and he was taking a mood stabilizer then for Bipolar I  
14 disorder, which was Trileptal.

15 Q. Did there come an a time when --

16 THE COURT: So Bipolar I or II?

17 THE WITNESS: It was Bipolar I.

18 Q. In terms of severity, where does Bipolar I fall in  
19 comparison to Bipolar II, Dr. Channell?

20 A. Bipolar I disorder would be a more severe diagnosis.

21 Q. And is it correct that that's your opinion, the mental  
22 disease or defect he suffers from as of today, correct?

23 A. Yes.

24 Q. What did Dr. Mart conclude based on Mr. Mahoney's  
25 presentation?

1 A. Dr. Mart was of the opinion that, as he said, the  
2 terminology that he used was that he was "quite manic" and  
3 diagnosed him with bipolar disorder not otherwise specified and  
4 personality disorder not otherwise specified.

5 Q. Can you describe what the "not otherwise specified" means.

6 A. Well, basically it would mean that he diagnosed him with  
7 bipolar disorder, but he didn't really clarify whether or not  
8 it was Bipolar I or Bipolar II.

9 Q. Throughout 2013, has he been noted or observed to be  
10 agitated and manic throughout that period of time at FMC  
11 Devens?

12 A. Throughout 2013? Yes. Basically, you know, he's been  
13 noted to be irritable and agitated for several years, easily  
14 provoked, with periodic episodes that appeared consistent with  
15 mania.

16 Q. Is it fair to say that numerous clinicians and evaluators  
17 have diagnosed Mr. Mahoney as bipolar?

18 A. Yes, he's been diagnosed with bipolar disorder by several  
19 clinicians who have done formal evaluations for the court, as  
20 well as his treating psychiatrists, and his current treating  
21 psychiatrist's diagnosis is also bipolar disorder.

22 THE COURT: And what's the predominant view? Is it I  
23 or II?

24 THE WITNESS: In my opinion, the predominant view has  
25 been Bipolar I, and that he's been treated for Bipolar I fairly

1 consistently for the last two to three years.

2 Q. Did you read Dr. Kriegman's report?

3 A. I did, yes.

4 Q. Do you know whether he agrees or disagrees with your  
5 characterization of Mr. Mahoney suffering from bipolar  
6 disorder?

7 A. The report indicated that he also believed Mr. Mahoney's  
8 diagnosis would be bipolar disorder.

9 Q. Based on your evaluation of Mr. Mahoney, does he have  
10 clear insight into his own mental illness?

11 A. No, he doesn't.

12 Q. What's the basis for your view in that regard?

13 A. He's aware he has bipolar disorder. He will acknowledge  
14 that that's his diagnosis when asked, although he has  
15 relatively poor insight into the way his bipolar disorder  
16 manifests itself and the impact that it has on his interactions  
17 with other people. He generally tends to believe that his  
18 symptoms are under control, when in fact they're not under  
19 control. You know, he agrees to take a benzodioxanes like  
20 Xanax or Klonopin and Seroquel because he likes the effect of  
21 those medications, but he's never really been compliant with  
22 any additional medications which were added to the regimen to  
23 try and control his ongoing symptoms.

24 He also, because he lacks the insight into the impact of  
25 his behavior, even though he will attend, for example,

1 counseling or attend anger management groups, his lack of  
2 insight prevents him from being able to apply those principles  
3 to his own situation or benefit from the treatment that's being  
4 provided.

5 Q. And what's the significance of his limited insight into  
6 his own mental illness?

7 A. Well, the significance is that he continues to do as he's  
8 done in the past and experience episodes of outbursts that at  
9 times will escalate into threatening statements or physical  
10 violence.

11 THE COURT: What is the drug that you believe will  
12 cure him or alleviate the symptoms?

13 THE WITNESS: Well, there isn't any medication that  
14 would cure his -- you know, he'll always have this condition.  
15 There are medications that could perhaps better control his  
16 symptoms. I'm not a psychiatrist, so it would be inappropriate  
17 for me to recommend any specific medication or dosage, but I do  
18 believe that he requires additional medication or an adjustment  
19 in his current medications in order to better control his  
20 hypomanic and manic symptoms.

21 THE COURT: So you don't have the expertise to say, if  
22 he took, for example, the lithium, whether or not he would be  
23 safe to go on the streets?

24 THE WITNESS: Well, you know, any medication he would  
25 be prescribed he would have to take for a period of time before

1 we would be able to make a determination on the impact of his  
2 behavior. Medications like lithium, for example, require blood  
3 testing to demonstrate that the lithium has built up in the  
4 blood system to a concentration which would be therapeutic; and  
5 when he was taking it, he wouldn't accept the blood work, so we  
6 were never really able to determine whether or not he was being  
7 treated at a therapeutic level.

8 So what I could say is, any medication he would be  
9 prescribed, I don't think anybody would be able to say whether  
10 or not that would have an impact on his behavior to such an  
11 extent he'd be appropriate for release until they saw how he  
12 did on it.

13 Q. Dr. Channell, have you reviewed notes or anything in  
14 Mr. Mahoney's file indicating that psychiatrists believe he  
15 should be taking something in addition to Seroquel?

16 A. Yes.

17 Q. What do you rely on?

18 A. Well, I know since he stopped taking the Seroquel -- or  
19 not Seroquel but the lithium, you know, his psychiatrist, after  
20 he stopped taking it, on multiple occasions had suggested to  
21 him that he go back on it, and he was unwilling to do that. I  
22 have talked to him about it personally and asked him, if his  
23 psychiatrist would meet with him and talk to him about it and  
24 work out a treatment regimen with it, if he would take it, and  
25 he told me in no uncertain terms that he would not take the

1       lithium again.

2               THE COURT:   Why?   What did he say?

3               THE WITNESS:   He simply said he wouldn't take it.   He  
4       didn't give me a reason.

5       Q.     Dr. Channell, could I ask you to turn to Exhibit 16 in the  
6       book you have before you.   Do you have that before you,  
7       Dr. Channell?

8       A.     Yes.

9       Q.     Who is Dr. Kambampati?

10      A.     Dr. Kambampati was Mr. Mahoney's treating psychiatrist at  
11      this point in time.

12      Q.     In looking at Mr. Mahoney's file, did you come to any  
13      conclusion about whether lithium was helping reduce his manic  
14      episodes from the past, including Exhibit 16?

15      A.     Well, at that point in time he was denying having racing  
16      thoughts, distractibility, irritable mood, euphoria, or  
17      impulsivity.   Dr. Kambampati said that "He has likely benefited  
18      from the addition of lithium -- but his compliance with med is  
19      only fair and has poor compliance with monitoring," which would  
20      have been the blood test, the lab work.

21      Q.     Was Dr. Kambampati one of the people who suggested that  
22      Mr. Mahoney take lithium due to an inadequate response to other  
23      drugs that he was on?

24      A.     Yes, he was.   In fact, he was the prescriber of the  
25      lithium.

1 Q. And how long has Mr. Mahoney been taking benzodiazapines  
2 like Seroquel, Xanax, and Klonopin?

3 A. Well, as I said earlier, he's taken one form or another at  
4 certain points in time for many years. I believe he's been on  
5 Klonopin, he was on it when he was at Cheshire House of  
6 Corrections in 2012, and then there was a period of time when  
7 he was not receiving it at Devens, and then I think within the  
8 last year he's been prescribed Klonopin again at Devens and has  
9 been taking it since.

10 Q. And while he's been on Seroquel and Klonopin -- are they  
11 both benzodiazepines?

12 A. No. Seroquel is a mood stabilizer.

13 Q. And while he's been on Seroquel and Klonopin, has he  
14 continued to have outbursts within FMC Devens?

15 A. Yes.

16 Q. Has he continued to have disciplinary issues at Devens?

17 A. Yes.

18 Q. And can you provide some examples of those.

19 A. Well, most recently there was an issue when he was at  
20 Devens that he -- just early this year he was on suicide watch  
21 for several days, primarily because he was angry that he hadn't  
22 received a legal phone call; and while he was on the locked  
23 unit -- this was in January -- he swore at and used some pretty  
24 abusive language towards one of the mid-level practitioners,  
25 PAs that we have who was providing him treatment, and basically

1 indicated to her that she was lucky that the door was between  
2 himself and her. So that would be one of the more recent  
3 incidents that I could identify.

4 Q. Okay. And then going back to 2013, in March of 2013, late  
5 March, were there any incidents where he became violent or  
6 threatening while taking Seroquel and Klonopin?

7 A. Yeah, he had started taking the Klonopin again in March of  
8 2013, and there were notes then indicating that he was talking  
9 a mile a minute, even while he was on the medication, and that  
10 he was continuing to present as agitated. There was an issue  
11 when he got angry with another inmate -- this was in September  
12 of 2013 -- over a TV, and from what I understand, basically  
13 stormed out of the room; and while leaving the room, he slammed  
14 the door, and the door hit the other inmate.

15 There was an incident, based on the transcripts that I  
16 reviewed, while he was in court pertaining to this issue late  
17 last year that he became extremely agitated and disruptive; and  
18 those were all behaviors which occurred while he was taking the  
19 Seroquel and the Klonopin.

20 Q. Dr. Channell, I'd like to refer you to Exhibit 19 in the  
21 book in front of you. This is an incident report.

22 THE COURT: But when he was on the lithium -- and I  
23 understand that that was limited -- did it calm him down?

24 THE WITNESS: According to his treating provider at  
25 the time, it appeared to be having some benefit, but as he

1 indicated, there were -- you know, he was not particularly  
2 compliant. He would miss a number of doses, and they never  
3 were able to get lab work to determine whether he was receiving  
4 a therapeutic dose, but his impression was that it was having  
5 some benefit.

6 THE COURT: Does lithium have side effects?

7 THE WITNESS: Yes. I mean, all medications have some  
8 type of side effects, and lithium does. As I said, I'm not a  
9 psychiatrist, so I'm not, you know, really in a position to be  
10 explicit with regard to what the side effects are, but  
11 certainly lithium does have side effects, and they can be quite  
12 troublesome to some people.

13 THE COURT: Like?

14 THE WITNESS: Dry mouth, tremor, things like that.

15 THE COURT: Is that pretty much the go-to drug for bad  
16 symptoms of bipolar?

17 THE WITNESS: Well, primarily bipolar disorder is  
18 treated with something like Seroquel in addition to a mood  
19 stabilizer like lithium, Depakote, Trileptal, those types of  
20 medications. And he's been tried on Depakote that I know of,  
21 and I know he did develop a rash to that, so it was stopped.  
22 He was on Trileptal, but I honestly wasn't able to identify any  
23 information about how long he took that or whether it was  
24 beneficial.

25 THE COURT: Thank you.

1 Q. And, Dr. Channell, referring you to Exhibit 16 in the book  
2 before you, did there come a time in February -- you said his  
3 compliance with lithium after he was prescribed it initially in  
4 November of 2012 was spotty; is that correct?

5 A. Yes.

6 Q. And then in February, 2013, did there come a time when he  
7 outright refused to take lithium or even have his blood levels  
8 tested?

9 A. Yes. It was after he had learned that he'd been found not  
10 competent and not restorable, and the reason he gave at the  
11 time was that he was angry about that decision, and at me in  
12 particular over the issue, and that he was not going to take  
13 his medication. There was also a period of time, several days  
14 where he didn't take the Seroquel either, but he did restart  
15 the Seroquel. He never restarted the lithium.

16 Q. He refused to take lithium after that?

17 A. Yes. He's not taken it since.

18 Q. And he said that was due to his disagreement with the  
19 opinion of the Court?

20 A. At the time, yes.

21 Q. Has he ever taken lithium from February, 2013, to today?

22 A. No.

23 Q. What's the significance, if any, of Mr. Mahoney's  
24 compliance or lack of compliance with the drugs he's been  
25 prescribed?

1 A. Well, I think what -- you know, I think -- I don't think  
2 an argument can be made that he's compliant. I believe he's  
3 partially compliant with the medications that he believes are  
4 what are sufficient to treat his symptoms, like the Klonopin  
5 and the Seroquel. However, when his treatment providers  
6 recommend additional medications, he has not been compliant  
7 with them; and I think the record fairly clearly illustrates  
8 that even while he's on these medications, he continues to  
9 exhibit significant agitation and symptoms consistent with  
10 either a hypomania or some episodes which appeared quite manic.  
11 So I think it's fairly obvious that these medications do not  
12 adequately control his symptoms and that he does need additional  
13 medication.

14 Q. When he's been on these medications, you talked about  
15 other incidents he's had while at FMC Devens. Could you turn  
16 to Exhibit 19.

17 A. Okay.

18 Q. What is Exhibit 19?

19 A. This is a discipline hearing officer report from -- the  
20 date of the incident report was April 3, but the actual  
21 incident had occurred on March 26, 2013.

22 Q. And what's described in this incident report in terms of  
23 Mr. Mahoney's behavior?

24 A. It basically says that "While escorting Inmate Mahoney  
25 from N5 to N1 --" this is on Page 2 in the box at the bottom,

1 third paragraph -- "While escorting Inmate Mahoney, Register  
2 No. 12272049, from N5 to N1, he became verbally aggressive  
3 toward staff while walking to N1. Once inside of N1, he became  
4 very aggressive and began kicking over trash barrels and  
5 chairs. We attempted to move Inmate Mahoney against the wall  
6 to control his behavior. However, he began resisting and  
7 kicking backwards towards the escorting staff. The inmate was  
8 then moved to the ground and placed in leg irons."

9 Q. Did Mr. Mahoney also have an incident the previous day, as  
10 described in Exhibit 18 which is in the book before you?

11 A. Yes. Basically this was the incident that prompted the  
12 officers having to move him to N1 in the first place.

13 Q. Could you also turn to Exhibit 9. What is Exhibit 9,  
14 Dr. Channell?

15 A. This is an inmate investigative report regarding  
16 Mr. Mahoney, who was the assailant, and a second inmate who is  
17 identified as the victim.

18 Q. And what happened with this incident that you described in  
19 your report?

20 A. Basically what had happened was, an inmate, Mr. Mahoney,  
21 was working in food service with another inmate, and they had a  
22 disagreement. I'm not exactly sure what the disagreement was  
23 over. And what the other inmate indicated was that  
24 Mr. Mahoney, quote, "went nuts" and grabbed him around the  
25 throat and tried to choke him, and then threw a bucket of water

1 on him. And then the SIS investigation revealed a video that  
2 did indicate he had done both of those things.

3 Q. Are you aware or did you look at records of his time spent  
4 at Cheshire in 2012, March and August of 2012?

5 A. Yes. The U.S. Marshals Service provided me a number of  
6 incident reports in relation to his time there.

7 Q. Could you please turn to Exhibit 5 in your book, please.  
8 Is this one of the incident reports that you reviewed?

9 A. Yes, it was.

10 Q. And what happened in March, 2012, at the Cheshire House of  
11 Corrections?

12 A. This was an issue that involved Mr. Mahoney became upset  
13 with a nurse, and during the incident -- he was described to be  
14 very aggressive, seemed to be yelling directly at another  
15 inmate, and then he aggressively struck the other inmate in the  
16 face with an open hand. And they reviewed a video, and  
17 immediately after striking the first inmate, Mahoney turned  
18 around and was noted to blind-side another inmate by striking  
19 him while he was walking into his cell.

20 Q. And was there another incident report from Cheshire in  
21 2012 --

22 THE COURT: Excuse me. Is there any way of knowing in  
23 these incidents what meds he was on?

24 THE WITNESS: Well, I can tell you that this was in  
25 March of 2012. Let me look at my notes.

1 THE COURT: You had said he was prescribed lithium --

2 THE WITNESS: He was on Klonopin and Seroquel at that  
3 point in time.

4 THE COURT: On 3/3/12?

5 THE WITNESS: Correct.

6 Q. Is it correct that he was not on lithium at that time,  
7 Dr. Channell?

8 A. He was not on lithium, no.

9 THE COURT: Although you had said he was first  
10 prescribed in February of 2012, so how do you know he was or  
11 wasn't on it?

12 THE WITNESS: I have records from when he was at  
13 Cheshire County indicating what medications he was on at that  
14 point in time.

15 THE COURT: Okay, thank you.

16 Q. He was first prescribed lithium at FMC Devens on what  
17 date? Does November, 2012, sound accurate?

18 A. He was first prescribed lithium, yes, in -- I believe it  
19 was November of 2012.

20 THE COURT: All right, so I have that wrong.

21 Q. Could you also refer to Exhibit 6 in the book before you,  
22 Dr. Channell. What is that?

23 A. This is another incident report from Cheshire County.  
24 It's for March 5, 2012, and the incidents were disorderly  
25 conduct and threatening any person. And this was an incident

1 with a staff member when Mr. Mahoney was noted to square off  
2 and told another -- told the staff member, "I will beat the  
3 shit out of you," and then he later told him that he would stab  
4 him.

5 Q. And during these incident reports, do you know if he was  
6 taking Seroquel at this time in March, 2012?

7 A. He would have been on Klonopin and Seroquel.

8 Q. I want to direct your attention to May of 2013. Did you  
9 become aware of any information about Mr. Mahoney's behavior at  
10 a hearing in the District Court in New Hampshire?

11 A. Yes. I believe that was an incident where he -- in May,  
12 2013 --

13 Q. Can you refer to Exhibit 10 in the book before you,  
14 Dr. Channell.

15 A. Oh, okay, yes. This was information which was provided to  
16 me by the Assistant United States Attorney in New Hampshire in  
17 relation to statements that Mr. Mahoney made during a hearing  
18 there.

19 Q. What did Mr. Mahoney say during that hearing?

20 A. AUSA Huftalen indicated that Mr. Mahoney had accused him  
21 of making false statements, and then in an agitated manner and  
22 loud voice said, if I filed another presumably false pleading,  
23 he would hit me in the head, and I would not get up.

24 Q. At the beginning just a moment ago, you also referred to  
25 an incident earlier this year in 2014. Is that incident

1 described at Exhibit 11 in your book?

2 A. Yes. This was the incident with the mid-level  
3 practitioner, the PA, while he was on the locked unit.

4 Q. And if you'd look at Exhibit 11, Bates No. 961 down at the  
5 bottom, is that a description of the incident?

6 (Witness examining document.)

7 A. Yes.

8 Q. And can you describe Mr. Mahoney's behavior.

9 A. He was asking for a legal phone call, and the PA, when he  
10 asked the PA for a legal phone call, she told him that she  
11 didn't know if the individual who provides those calls, his  
12 case manager, unit manager, was around that day, but if she saw  
13 him, she would let him know that he was asking for a call. And  
14 then he became upset and said, "No. You go and call him now  
15 and tell him what I want." He swore at her. She said that he  
16 then became explosive and threatening and stated, "You'd better  
17 get away from this door, you dumb, stupid," quote, "fucking  
18 cunt. You're a beast. You're lucky that this door is here."  
19 And then he proceeded to make more derogatory statements to the  
20 PA.

21 Q. Did he do anything to his cell when he was escorted back  
22 to his cell on that occasion?

23 A. He was tearing things up in his cell and covered up his  
24 cell window so we couldn't see them.

25 THE COURT: What was happening here?

1 THE WITNESS: What was happening?

2 THE COURT: Yes.

3 THE WITNESS: As far as when this incident occurred?

4 THE COURT: I'm just trying to understand. Was he not  
5 on any medications?

6 THE WITNESS: Yes, he was on medication. This would  
7 have been -- he would have been on Klonopin and Seroquel at  
8 this time.

9 Q. Dr. Channell, during the time of all these incidents, was  
10 he taking Seroquel that we just described?

11 A. The recent incidents at FMC Devens, yes, and also the  
12 issues at Cheshire County.

13 Q. And he was not on lithium during any of these events; is  
14 that correct?

15 A. Not to my knowledge, no.

16 Q. Is this one of the reasons why he was asked by his  
17 psychiatrist to take lithium, because he's having an inadequate  
18 response to Seroquel?

19 A. Yes. I mean, these are perfect examples of the types of  
20 behavior he continues to exhibit, even while he's on his  
21 present medications.

22 Q. And his response to that suggestion and that prescription  
23 was what?

24 A. That he wouldn't take it.

25 Q. Dr. Channell, I want to switch gears a little bit and ask

1 you about your basis for finding that Mr. Mahoney's mental  
2 disease would create a substantial risk of bodily injury if he  
3 were released. What do you base that opinion on?

4 A. Well, there are several, I mean, a number of different  
5 factors that I would take into consideration prior to arriving  
6 at that opinion. Obviously, all of the information that I've  
7 reviewed since I began working with Mr. Mahoney, his history of  
8 violence in particular is concerning because of the number of  
9 times that he has engaged in violent behavior. It's fairly  
10 apparent that to his way of thinking, that engaging in violence  
11 is an acceptable way to deal with disagreements, or becoming  
12 upset, that to become threatening or physically assaultive is  
13 acceptable to him. So, obviously prior behavior is one of the  
14 things that we look at when we try to assess risk. You know,  
15 that's one of the only ways that we can have any level of  
16 certainty that someone will perhaps go on to engage in similar  
17 behavior is by past behavior which was consistent with that;  
18 and I think in Mr. Mahoney's case, there's a pretty good  
19 database of violent incidents that have occurred throughout his  
20 life, certainly some very significant ones at an earlier age,  
21 although his violence has been ongoing. It's never really gone  
22 away. So his violence history is one issue that we take into  
23 consideration, which shows an elevated risk. It doesn't  
24 necessarily show that the risk is due to a mental illness; but  
25 I believe, when you take into consideration the fact that his

1 mental illness manifests itself with significant irritability,  
2 agitation, being easily provoked, having a lack of insight into  
3 both his symptoms and his behavior, those symptoms are clearly  
4 ones that are associated with becoming aggressive, assaultive,  
5 threatening in Mr. Mahoney's history. So his mental illness,  
6 his history of violence are significant factors which I  
7 considered in coming to a conclusion that he would likely, in  
8 my opinion, he would pose a substantial risk of bodily injury  
9 to another person if he got out because of his present mental  
10 condition, which, in my opinion, is not adequately treated.

11 Q. And just to follow up on the question the Judge had, you  
12 talked about a prior history of violence he's had. You talk  
13 about charges as well as convictions. Just focusing on the  
14 victims for now, approximately how many assaultive or assault  
15 and battery type convictions does Mr. Mahoney have on his  
16 record?

17 A. When I looked at the history that I had, which was  
18 provided to me by the United States Probation Office in  
19 New Hampshire back when the competency evaluation was going on,  
20 indicated that he had about twelve criminal convictions that  
21 involved violence, and had led to approximately ten years on  
22 and off of being incarcerated.

23 Q. And some of those convictions occurred from the late '90s  
24 into the early 2000s; is that correct?

25 A. That's correct.

1 Q. And in addition to that, he's been arrested on other  
2 charges during that time, correct?

3 A. Yes.

4 Q. You also talked about a continuing pattern of violence.  
5 What do you base that on?

6 A. Well, I think, if you purely look at his criminal record,  
7 it may appear that the violence stopped at a certain point in  
8 time; but as clearly indicated by the number of incident  
9 reports we've just gone over, and some others that we didn't  
10 address, the behavior has continued in custody, and he has  
11 received official sanctions and official incident reports in  
12 relations to continued assaults and continued threatening  
13 behavior while in custody. And that would be the basis for my  
14 opinion that his violent behavior has continued beyond that  
15 indicated in his criminal history.

16 Q. You were here for Mr. Schneider's opening comments,  
17 correct?

18 A. Yes.

19 Q. Did you hear him describe FMC Devens as a scary world?

20 A. Yes, I did.

21 Q. Do you agree with that statement?

22 A. Well, obviously, I work at FMC Devens, and I get to leave  
23 every morning, so my perception is different than what an  
24 inmate's would be. But I have been there for many years, and I  
25 have worked with hundreds of inmates at the facility, and I

1     couldn't name more than a handful of people who weren't  
2     suffering from serious paranoia who felt that it was a  
3     threatening environment. I've worked in a number of prisons,  
4     I've toured many prisons, and the idea that FMC Devens is a  
5     scary prison compared to some of these others is clearly  
6     inaccurate. You know, most of the inmates that we have, when  
7     they get transferred to somewhere that is a holding facility or  
8     another facility, their goal is to try to get back to FMC  
9     Devens. So I would not characterize it as a scary prison.

10    Q.    Would you describe FMC Devens as being a controlled  
11    environment of some type?

12    A.    Yes. FMC Devens is basically a medical and psychiatric  
13    hospital within a correctional setting, and it is a very  
14    controlled environment. It's the equivalent of, you know, a  
15    mental health psychiatric hospital. So it's one of the more  
16    controlled types of settings that an individual could be placed  
17    in.

18    Q.    And are there people there and procedures in place such  
19    that if violence does begin, it's attempted to be stopped  
20    quickly?

21    A.    Yes.

22    Q.    Are you aware of any plans that Mr. Mahoney conveyed about  
23    what he would do upon his release in the materials that you  
24    reviewed?

25    A.    Yes.

1 Q. What was that?

2 A. Well, I know that he has indicated that --

3 THE COURT: Is this what he said to you?

4 MR. CALLAHAN: And, your Honor, we're getting to the  
5 letter that we described, the October, 2013 letter.

6 MR. SCHNEIDER: I object, your Honor. I mean, this is  
7 clearly hearsay. It's based on a statement of an out-of-court  
8 declaration.

9 THE COURT: I know the letter you're referring to  
10 because I did read it in your second report, right? Before we  
11 go into the substance of that, did he ever say anything to you  
12 that suggested a threat to a former counselor or a former  
13 psychiatrist?

14 THE WITNESS: Mr. Mahoney?

15 THE COURT: Did you ever ask him about it?

16 THE WITNESS: Yes. I interviewed him about it, and he  
17 denied it. He denied having made the threat. I interviewed  
18 him after I received the letter. So, no, he has never said  
19 anything personally to me about -- that was threatening  
20 towards --

21 THE COURT: Did you ever hear anything that sounded  
22 like a threat to hurt somebody in any of your interviews?

23 THE WITNESS: I don't believe so. Certainly if I had,  
24 I would have documented it in the report, and, you know, I  
25 don't recall him ever saying anything personally to me that --

1 I mean, he's voiced significant displeasure with a number of  
2 individuals with me, but I haven't heard him say anything in  
3 particular that I would construe as threatening to me  
4 personally.

5 THE COURT: Did you personally interview the inmate  
6 who made the allegations about the threat?

7 THE WITNESS: I did not, no.

8 THE COURT: I don't see how I go into this. Do you  
9 believe that they were reliable?

10 THE WITNESS: Based on the information that was in the  
11 letter, a number of factors which I do not believe another  
12 inmate could have been aware of without those having been  
13 provided to them by Mr. Mahoney, it is my opinion that they are  
14 credible.

15 MR. SCHNEIDER: I would object and move to strike,  
16 your Honor.

17 THE COURT: Overruled. So to the extent, I'm not  
18 allowing in the letter separately. So in your field, is  
19 relying on a statement -- well, let me ask you, was this other  
20 inmate mentally ill?

21 THE WITNESS: No, he wasn't. He was there for medical  
22 reasons. He was in the medical hospital, not the psychiatric  
23 hospital.

24 THE COURT: So in your field, do you feel that it is  
25 reliable to take that kind of hearsay statement into account?

1           THE WITNESS: I suppose it depends on the context.  
2       Certainly in my opinion and in my experience, when you have an  
3       individual who has repeated episodes that are documented of  
4       threatening behavior, that another example of threatening  
5       behavior does have a certain degree of credibility. I mean,  
6       obviously there are possible other motivations a person would  
7       have to provide that type of report. I'm not aware of any  
8       clear secondary gain that this other individual specifically  
9       asked for or obtained by providing this information; but in the  
10      context of, for example, if we were reviewing an individual for  
11      whether or not to recommend them for conditional release who  
12      was already committed and we became aware of something like  
13      this, it would be one piece of information we'd certainly  
14      consider in our determination.

15           MR. CALLAHAN: Your Honor, could I ask a few questions  
16      just around this letter?

17           THE COURT: Well, the problem is, without introducing  
18      the inmate, I can't take the substance of it for the truth of  
19      the matters asserted. I understand that he'd use it as  
20      somewhat corroborative of his point of view. Maybe for that  
21      limited purpose I can consider it, but not for the truth of  
22      what the allegations are unless you're planning on bringing him  
23      in. It sounds like he didn't even meet with him, right?

24           THE WITNESS: I did not meet with him, no.

25           THE COURT: So you have no way of independently

1 assessing. So I don't know what else you were going to ask.  
2 You can ask the questions, and we can see if they draw an  
3 objection.

4 MR. SCHNEIDER: If I may also, I would object to your  
5 Honor even taking this information as corroborative of his  
6 point of view. I think there's information about that inmate  
7 that suggests these are just sort of baseless accusations.

8 THE COURT: Well, I take that objection, but at this  
9 point, I wouldn't admit it for the truth of the matters  
10 asserted, but an expert can rely on things. I'm just not sure  
11 it's even reliable without him having interviewed the inmate.  
12 I mean, the inmate, do you know what he was in there for?

13 THE WITNESS: I was made aware of it at one point in  
14 time, but I can't recall, your Honor.

15 MR. CALLAHAN: Your Honor, I'll move on to a separate  
16 question.

17 THE COURT: Is he still in custody?

18 THE WITNESS: He is still in custody. He's no longer  
19 at FMC Devens.

20 THE COURT: Do you know what the medical condition he  
21 was in there for was?

22 THE WITNESS: No, I don't.

23 Q. Did you review a transcript of a November 22, 2013 hearing  
24 in this courtroom where Mr. Mahoney was present?

25 A. Yes.

1 Q. If you turn to Exhibit 13 in the book in front of you,  
2 that's a transcript of that hearing. Did you review this?

3 A. Yes.

4 Q. Do you know if Mr. Mahoney expressed any displeasure, any  
5 outbursts relating to Mr. Watkins, his former counsel?

6 A. Yes, he did.

7 Q. And is that described on Page 15 of the transcript? I  
8 would direct you to Line 10-16.

9 A. Yes, it is.

10 Q. What did he say?

11 A. He said to Mr. Watkins, "You stay the fuck out of this  
12 whole thing. Who are you calling a piece of shit saying I was  
13 convicted of aggravated rape?"

14 Q. Do you know if Mr. Mahoney was removed from the courtroom  
15 after his outburst?

16 MR. SCHNEIDER: Objection, your Honor. I think that  
17 mischaracterizes who he's talking to in this.

18 THE COURT: Well, the transcript --

19 MR. SCHNEIDER: I think it's not at all clear from the  
20 context who he's speaking to.

21 THE COURT: Well, I don't know who he's speaking to,  
22 but I will allow in the statement.

23 Q. Dr. Channell, I'd like to ask you about Mr. Mahoney's  
24 insight or lack of insight into his past incidents of violence.  
25 Do you believe he has any?

1 A. With regard to his --

2 MR. SCHNEIDER: Objection. Asked and answered.

3 THE COURT: Overruled. You mean apart from what he's  
4 talked about already, all these documents?

5 MR. CALLAHAN: Mr. Mahoney's own insight. I'm asking  
6 about Dr. Channell's opinion of Mr. Mahoney's own insight into  
7 his past history of violence.

8 THE COURT: Oh, I see. Overruled.

9 A. No, I do not believe he has any insight into his past  
10 history of violence.

11 Q. And what do you base that conclusion on?

12 A. I've talked to him about it on several past occasions.  
13 For example, I asked him at one point in time about the assault  
14 to rape charge, and the way he described that to me was that he  
15 asked a friend for oral sex, and when she refused, she walked  
16 away. And while I don't have specific information with regard  
17 to what exactly happened, given the fact he was convicted of  
18 the offense and received a fairly significant sentence, it's  
19 hard to imagine that that adequately describes what had  
20 occurred.

21 MR. SCHNEIDER: Objection.

22 THE COURT: Do you know whether or not -- have you  
23 been able to review a plea colloquy or a trial transcript?

24 THE WITNESS: No. I've tried to obtain further  
25 information but was never able to obtain anything else.

1 MR. SCHNEIDER: Objection and move to strike. It's  
2 speculation as to --

3 MR. CALLAHAN: As to what portion?

4 THE COURT: Yes, as to what portion?

5 MR. SCHNEIDER: Could that be read back?

6 THE COURT: You mean the part, it must have been  
7 serious because he got six years?

8 MR. SCHNEIDER: Correct.

9 THE COURT: No. I'll allow that testimony.

10 A. When I've asked him about his violence in general, he's  
11 indicated he's had a few small things in the past, like  
12 assaulting a girlfriend. I have asked him about the  
13 restraining orders that he's received in the past, and the way  
14 he described that was, "Restraining orders are very easy for a  
15 woman to get."

16 THE COURT: Did you ever review the record behind  
17 those restraining orders?

18 THE WITNESS: No, your Honor.

19 Q. As to those restraining orders, how many restraining  
20 orders did Mr. Mahoney have taken out against him?

21 A. I believe he's had five restraining orders by three  
22 different women. I believe that's accurate.

23 THE COURT: Do you know whether those were based on  
24 that elevated speech, that pressured speech that someone  
25 perceived as being scary, or whether it was actual physical

1 touching?

2 THE WITNESS: I don't know one way or the other.

3 Q. Dr. Channell, do you know if he was convicted of violating  
4 any restraining orders taken out against him?

5 A. Yes, he was.

6 Q. And do you know if he was sent based on that violation?

7 A. Yes, he was.

8 Q. Has Mr. Mahoney ever told you that he's not dangerous at  
9 all?

10 A. Yes. I've asked him if he's ever engaged in any type of  
11 threatening behavior, for example. He said "Never." For  
12 example, with regard to a threatening incident with  
13 AUSA Huftalen, when I talked to him about that, he indicated it  
14 wasn't threatening; it was just a misunderstanding. With  
15 regard to being violent in general, no, he indicated to me that  
16 he's a very, very, very nice guy, as he said, and that he gets  
17 along with everybody.

18 Q. What is the significance, if any, of his inability to have  
19 insight into his own history of violence?

20 A. Well, I think his lack of insight into his history of  
21 violence predisposes him to repeat his violent behavior because  
22 he doesn't really learn from experience. It's the combination  
23 of both the lack of insight and the lack of empathy and a  
24 failure to accept responsibility for his behavior, it's a  
25 combination of things that make it difficult for him to prevent

1 himself from engaging in that behavior again in similar  
2 circumstances.

3 Q. Given his lack of insight into his own history of  
4 violence, what does that say about his prospect for treatment  
5 going forward if he were released?

6 A. Well, lack of insight into one's mental illness  
7 predisposes a person to be less compliant or noncompliant with  
8 treatment because either they don't believe they have the  
9 illness or they don't believe that they have the symptoms which  
10 their treatment provider believes that they do have. So they  
11 may be noncompliant completely, or they may be noncompliant in  
12 part. And, also, as I'd indicated earlier, you know,  
13 medication is not the only type of treatment that could be  
14 beneficial to someone with Mr. Mahoney's history. Certainly  
15 things like anger management and other types of psychotherapy  
16 are helpful also; but in Mr. Mahoney's case, because of his  
17 lack of insight and failure to accept responsibility, even  
18 while participating in that type of treatment, it would be very  
19 difficult for him to be able to apply those principles to  
20 himself and benefit from the treatment.

21 THE COURT: So is he undergoing no treatment at all  
22 now, no psychiatric treatment?

23 THE WITNESS: Well, he is taking the Seroquel and the  
24 Klonopin now, and I know he has participated in some treatment  
25 groups at FMC Devens.

1           THE COURT: And is that standard, or should he be  
2 receiving individualized treatment?

3           THE WITNESS: I believe that as far as individual  
4 therapy, counseling, I believe it would be beneficial for him  
5 but only once his hypomania and manic symptoms are under  
6 control. You know, psychotherapy is not likely -- or is very  
7 unlikely to have much benefit while somebody is actively  
8 experiencing those symptoms.

9       Q. Dr. Channell, just going back to FMC Devens, in your  
10 experience having worked there, is violence within FMC Devens a  
11 common occurrence?

12      A. Violence occurs. I wouldn't describe it as common. It's  
13 fairly infrequent.

14      Q. You also used certain risk assessment tools in arriving at  
15 your conclusion; is that correct?

16      A. Yes. I used two risk assessment instruments, and I also  
17 administered the -- well, I didn't administer it -- I completed  
18 a Psychotherapy Checklist-Revised.

19      Q. Just starting with that, the Psychotherapy  
20 Checklist-Revised, is that also referred to as the PCL-R?

21      A. Yes, it is.

22      Q. What is the PCL-R?

23      A. It's an instrument that's designed to assist in evaluating  
24 for the construct of what's called "psychopathy" to assist in  
25 making a determination as to whether or not somebody would meet

1 the criteria for that construct.

2 Q. And what is the purpose of the test?

3 MR. SCHNEIDER: Your Honor, if I may object just for  
4 this whole line of questioning. We believe that the  
5 instruments are unreliable. I understand there's a *Daubert*  
6 issue and your Honor is going to investigate.

7 THE COURT: Well, so he's got to tell me what he's  
8 relied on and what he knows about them, and then you'll  
9 challenge them, and if I strike them, I strike them.

10 MR. SCHNEIDER: Thank you.

11 THE COURT: Thank you. I'm sorry.

12 A. I'm sorry, could you repeat the question.

13 Q. Sure. What does the PCL-R take into account?

14 A. Well, it's an assessment of psychopathy. It's a 20-item  
15 scale, which each one of the items on the instrument is an item  
16 which is believed to be an aspect of psychopathy. And  
17 psychopathy, it's not a personality disorder as far as an  
18 actual diagnosis, but it is consistent with the idea of what a  
19 personality disorder is, which is a kind of pervasive way of  
20 perceiving the world and interacting with the world, which is  
21 longstanding in nature; and basically the PCL-R is designed to  
22 assess for that construct, psychopathy.

23 Q. Who uses the PCL-R?

24 A. Well, it's primarily used -- well, it would be used by  
25 individuals who have been trained in its use. It's used for

1 both clinical and research purposes. It can be used for a  
2 variety of reasons, but it is very frequently used in the  
3 assessment of risk of violence or sexual violence.

4 Q. How long has the test been used or in use?

5 A. It's been used since approximately 1991.

6 Q. And the revised checklist?

7 A. 2003.

8 Q. How many times have you administered this device, this  
9 tool?

10 A. I don't know exactly. Probably between thirty and forty  
11 times.

12 THE COURT: Has it been peer reviewed?

13 THE WITNESS: Yes, it has.

14 THE COURT: Do you consider yourself an expert in the  
15 risk assessment tool itself?

16 THE WITNESS: Well, I wouldn't characterize the PCL-R  
17 as a risk assessment tool. I mean, it is useful in the process  
18 of risk assessment. But with regard to the instrument, yes, I  
19 do consider myself an expert.

20 THE COURT: And just since there's been a challenge to  
21 it, has the revised PCL-R been validated?

22 THE WITNESS: Yes, it has.

23 THE COURT: In a peer-reviewed journal?

24 THE WITNESS: It has been peer reviewed. There are a  
25 number of research studies that have indicated that the PCL-R

1 is related to violent behavior in the community after release  
2 from institutions.

3 THE COURT: Have there been any challenges to it in  
4 the field?

5 THE WITNESS: Oh, I'm sure there have. I couldn't say  
6 specifically the cases, but absolutely, yes, there have been  
7 challenges.

8 THE COURT: Is it generally accepted by -- what are  
9 you, forensic psychologists?

10 THE WITNESS: It is generally accepted and is a widely  
11 used instrument by forensic psychologists.

12 THE COURT: Is that just in the federal system?

13 THE WITNESS: No. It's used across the board by  
14 psychologists and psychiatrists.

15 THE COURT: Not just in corrections institutes?

16 THE WITNESS: Not just in corrections, no.

17 THE COURT: So who else might use it?

18 THE WITNESS: Well, it could be used in a broad  
19 variety of settings. It could be used in inpatient settings.  
20 It's also used for research purposes. It's often used -- in  
21 certain statutes, it's a required component of the assessment  
22 of sexual risk, of sexually dangerous persons. For example, in  
23 Texas they require the use of the PCL-R in those evaluations.

24 THE COURT: And, to your knowledge, has it ever gone  
25 through a rigorous *Daubert* proceeding?

1           THE WITNESS: Again, I can't speak to a specific case.  
2 I would be surprised if it had not.

3           THE COURT: You don't know, okay.

4 Q. And to get to the bottom line, has the PCL-R been accepted  
5 in the scientific community?

6 A. Yes, it has.

7 Q. Did you score the PCL-R for Mr. Mahoney?

8 A. Yes, I did.

9 Q. And what was the result?

10 A. He got a score of 25 out of a total possible score of 40.

11 Q. And can you explain the basis for that score.

12 A. Yes. Basically, I mean, primarily most of the literature  
13 that discusses the PCL-R would use a cutoff of around 30 as an  
14 indicator of someone who does in fact exhibit psychopathy. So  
15 Mr. Mahoney's score was below that, although it was an elevated  
16 score, and it was elevated due to several different factors.  
17 One is that he's an individual who's grandiose. He has what I  
18 would characterize as a grossly inflated view of his abilities  
19 in certain areas. When you talk to him, he will use a lot of  
20 technical terminology, legal terminology, which while initially  
21 it may appear fairly impressive, upon further review, it's  
22 often incorrect or inaccurate in one way or the other. He has  
23 a history of deceitfulness, especially with regard to, as I've  
24 experienced it, discussions with regard to his criminal  
25 history, for example. He has a lack of remorse or guilt with

1 regard to his behavior. He shows a general lack of concern  
2 about the consequences of the behavior that he has exhibited,  
3 and often will view himself as the victim as opposed to the  
4 other individuals, who in many of these cases were the actual  
5 victims. If he doesn't view himself as a victim in that  
6 capacity, he will view himself as somebody who's had a basic  
7 bad luck or had been unfairly prosecuted by an unfair criminal  
8 justice system. As I've discussed already, he has very poor  
9 behavioral controls. When he becomes agitated, he acts out.  
10 He has a short temper, impulsive.

11 One of the other factors on the PCL-R is whether or not an  
12 individual has a history of revocation of conditional release,  
13 and Mr. Mahoney has violated supervised release and also  
14 parole, I believe, at one point in time in the past. And, as I  
15 testified earlier, he has what's characterized as criminal  
16 versatility, which would be a wide variety of different types  
17 of offenses in his past.

18 Obviously, as I said, he did not score at a point where I  
19 would characterize him as exhibiting psychopathy, and as a  
20 result, there are several different areas that he didn't  
21 exhibit risk factors, as based on the PCL-R. And those would  
22 be, he doesn't have a history of promiscuous sexual behavior,  
23 and there's no documented history of juvenile delinquency that  
24 I'm aware of.

25 Q. Do you have an opinion of whether he demonstrated strong

1 psychotic tendencies based on your administration of the PCL-R?

2 A. I believe there were some strong psychopathic tendencies  
3 as they would relate to psychopathy, but I would not  
4 characterize him as somebody who has the construct of  
5 psychopathy.

6 Q. You also said you used the HCR-20. What does HCR-20 stand  
7 for?

8 A. HCR-20 stands for the History Clinical Risk-20. Basically  
9 it's a checklist of items that are used to assist in assessing  
10 risk for violence.

11 Q. And what approach does the HCR-20 take?

12 A. Well, it's a measure of structured clinical judgment. So  
13 basically what it has are ten items that are dealing with the  
14 person's history or past behavior. The five items that are  
15 assessed, their current presentation, which are the clinical  
16 items, and then five items that are focused on risk management  
17 or future types of items.

18 Q. And the five and the five and the ten add up to the  
19 twenty; hence, the name?

20 A. Yes.

21 Q. And how does it work? How is it scored, or how is the  
22 structured clinical judgment organized?

23 A. Well, basically the items on the instrument are ones that  
24 have been found through research to have a positive correlation  
25 with violence, to be associated with violent recidivism

1 specifically; and the evaluator basically goes through the  
2 items and makes a decision for each item as to whether or not  
3 that particular item would apply to this individual, whether it  
4 would not apply, or whether it would be partially present. And  
5 once completing the evaluation, even though you do arrive at a  
6 total score, because this is a measure of structured clinical  
7 judgment as opposed to strictly an actuarial type of  
8 instrument, the evaluator would make a determination of whether  
9 or not that individual posed a low, moderate, or high risk  
10 based on the particular score that they received.

11 THE COURT: What would you call this tool?

12 THE WITNESS: What would I call it?

13 THE COURT: Yes.

14 THE WITNESS: It's a risk assessment instrument. It's  
15 a structured clinical judgment risk assessment instrument.

16 Q. And, Dr. Channell, you said it was based on twenty  
17 questions or twenty factors that have a correlation with  
18 violence?

19 A. That is correct.

20 Q. And what's that correlation based on?

21 A. It's based on empirical data, based on research studies  
22 which have looked at individuals who have been released and  
23 have gone on to reoffend violently, recidivism rates with  
24 regard to violent behavior, and those factors which would have  
25 been identified in that group of individuals.

1 THE COURT: Is it peer reviewed?

2 THE WITNESS: Yes, it is.

3 THE COURT: And is it generally viewed as reliable in  
4 your field of forensic psychology?

5 THE WITNESS: Yes. Well, there's been a good deal of  
6 research done on the inter-rater reliability of the HCR-20, and  
7 it tends to perform quite well with regard to reliability.

8 Q. How long has the HCR-20 been in use, Dr. Channell?

9 A. It began being used in 1997.

10 Q. And who uses the HCR-20?

11 A. It would be used by trained clinicians for the purpose of  
12 doing a risk assessment evaluation for individuals with a  
13 mental illness.

14 Q. And is it supported by research?

15 A. It is. There's a broad foundation of research related to  
16 the HCR-20.

17 Q. Do you know if the HCR-20 has been used in courts across  
18 the country?

19 A. Yes. There have been more than -- a recent study  
20 identified more than twenty different cases in twelve different  
21 jurisdictions where the HCR had been admitted as part of a  
22 civil commitment proceeding.

23 THE COURT: Do you know whether this has gone through  
24 any kind of full-blown *Daubert* hearing in any court?

25 THE WITNESS: I'm not aware of a specific *Daubert*

1 hearing in relation to the HCR-20.

2 MR. CALLAHAN: Your Honor, there is briefing on that  
3 in the government's motion to strike about the one challenge  
4 that we were aware of.

5 Q. Do you know if the HCR-20 has been used or cited in courts  
6 within this district?

7 A. Yes. There have been several prior cases where the HCR-20  
8 has been used in a civil commitment proceeding here in  
9 Massachusetts.

10 Q. Has the HCR-20 been tested?

11 A. Well, there have been a number of studies that have  
12 addressed the validity of the HCR-20 with regard to its risk  
13 assessment capabilities, and that's a fairly detailed area. I  
14 don't know how much detail you want me to include. And that  
15 data indicates that it does a statistically significantly  
16 better than chance with regard to prediction of risk outcome.  
17 Basically -- I'll just try to be as basic and brief as I can.  
18 You know, with regard to assessing validity as it would apply  
19 to these types of risk assessment instruments, usually what's  
20 utilized is something called "receiver operating  
21 characteristics."

22 Q. What are those?

23 A. It's a method by which you would contrast the number of  
24 what are called "true positive conclusions." So, for example,  
25 in this type of setting, if you were to come to a conclusion

1 that a person would engage in violent behavior and then they do  
2 in fact go on to engage in violent behavior, that would be  
3 considered a true positive. So they will compare true positive  
4 outcome to false positive outcome. And a false positive would  
5 be if an individual -- if the conclusion was that an individual  
6 would engage in violent behavior and they in fact do not go on  
7 to act violently, that's called a false positive. And what you  
8 would arrive with through the use of receiver operating  
9 characteristics is a statistical measure known as an area under  
10 the curve, or AUC. And in a very basic way, what that is is a  
11 number between zero and 1. .5 would basically indicate chance  
12 performance, meaning that instrument does no better than  
13 flipping a coin, for example, in coming to a conclusion, all  
14 the way up to 1, which would mean it would be a perfect  
15 predictor, meaning that every time the conclusion was arrived  
16 at that the individual would engage in violent behavior, they  
17 would always engage in that violent behavior, and there would  
18 be no false positives whatsoever.

19 So what you have basically is a number between zero and 1,  
20 .5 kind of being the cutoff at which you would say that the  
21 instrument has no real utility or validity for that purpose  
22 because it doesn't do any better than chance. And there have  
23 been a number of studies that have looked at the HCR-20, and  
24 the AUC that is often found in those studies ranges between .69  
25 and .8. So if you consider the idea that .5 would be a chance

1 outcome and 1 would be perfect, it's clear that it is obviously  
2 not a perfect instrument, and that's an ideal that we would  
3 likely never be able to meet, that we would never have a false  
4 positive outcome with regard to violence risk assessment; but  
5 it does perform much better than chance. But obviously there  
6 are false positives. There are situations where you would  
7 reach a conclusion which may in fact not be accurate as the  
8 result of use of the instrument.

9 Q. Has the instrument, the HCR-20, been accepted in the  
10 scientific community?

11 A. Yes, it has.

12 Q. And is there a standard for the control of its application  
13 or how it's used with a subject?

14 A. Yes. It has a detailed manual with regard to its use.

15 Q. How many times have you used the HCR-20?

16 A. I've used the HCR-20 very frequently. You know, I  
17 don't -- well, more than a hundred times. It may be quite a  
18 bit more than that. I honestly don't know. I use it quite  
19 regularly.

20 Q. Can you describe the twenty factors or focus on the key  
21 factors within the twenty factors that you scored with  
22 Mr. Mahoney and how he fared on them. Actually, before we get  
23 to that, did you apply this test to Mr. Mahoney?

24 A. Yes, I did.

25 Q. And what was your ultimate conclusion about where he fell

1 on the low-, moderate-, or high-risk category?

2 A. My conclusion was that the number of risk factors which  
3 were present for Mr. Mahoney indicated a high level of risk.

4 THE COURT: Why would this test come out high, whereas  
5 the other one came down below the cutoff?

6 THE WITNESS: Well, the other instrument that I  
7 described was not a risk assessment instrument. That was a  
8 measure -- it's more akin to what's called a diagnostic type of  
9 instrument to help you identify whether or not the person has  
10 psychopathy. So that was not a risk assessment instrument.  
11 And I wouldn't characterize the outcome as low on that  
12 instrument. It was below --

13 THE COURT: Below the cutoff?

14 THE WITNESS: It was below the cutoff for psychopathy,  
15 but that's not necessarily equivalent to risk. But the score  
16 that he obtained wasn't a low one, even though it was below the  
17 cutoff.

18 Q. And just to clarify that, you used the PCL-R score in your  
19 application or administering the VRAG, which is a test we'll  
20 come up to later; is that correct?

21 A. The PCL-R is actually a component both of the HCR-20 and  
22 the VRAG, which is the primary reason that I use that  
23 instrument, so that I could score those two instruments.

24 Q. So you aren't relying specifically on the PCL-R by itself  
25 in isolation; is that correct?

1 A. No. I didn't rely on any of these instruments in  
2 isolation.

3 Q. You said that there were ten historical, five clinical,  
4 and five risk management factors in the HCR-20. Can you take  
5 us through the ten historical ones and how they apply to  
6 Mr. Mahoney.

7 THE COURT: Do you have this instrument, a copy of it?

8 MR. CALLAHAN: The scoring sheets for it? We do. I  
9 don't know if I have copies, your Honor.

10 MR. SCHNEIDER: I have copies, your Honor. And I  
11 would stipulate to them.

12 THE COURT: Do you have copies? Do you have copies of  
13 them?

14 MR. SCHNEIDER: Yes.

15 THE COURT: Let me ask you just on a timing, how much  
16 longer do you think you have, Mr. Callahan?

17 MR. CALLAHAN: I think I have about fifteen minutes,  
18 depending upon -- fifteen to twenty minutes.

19 THE COURT: I'm not sure -- I have a phone call I have  
20 to take at about noon, and I was hoping to break then for,  
21 let's say, half an hour or so. What were you thinking,  
22 Mr. Schneider? Were you all prepared to go into the afternoon?

23 MR. SCHNEIDER: I was prepared to go into the  
24 afternoon, yes.

25 MR. CALLAHAN: As was I, your Honor.

1 THE COURT: We have a few quick Rule 16 conferences.

2 (Discussion between the Court and Clerk.)

3 THE COURT: All right, thank you.

4 MR. CALLAHAN: May I, your Honor?

5 THE COURT: All right.

6 Q. Dr. Channell, focusing on the historical factors, how did  
7 Mr. Mahoney score on those ten factors?

8 A. Well, you know, basically the way the instrument would be  
9 conducted would be, take a look at each factor and decide  
10 whether or not that factor was present for the individual; and  
11 if it was, it would typically be a score of 2. If it's not  
12 present, it would be a score of zero. In some cases it may be  
13 partially applicable or partially present, and you would give a  
14 score of 1. The historical items that were significant with  
15 regard to Mr. Mahoney were the violence history. He had a  
16 number of violent offenses, and the number of offenses that he  
17 had alone would make his score a 2 on that instrument.

18 The other item would be young age at first violent  
19 incident. That's based on research that shows that the younger  
20 individuals are at the point at which they engage in their  
21 first violent episode of behavior, the more likely they are to  
22 later go on to engage in future violent behavior. The cutoff  
23 for a score of 2 for the HCR-20 is under age 20, 20 or under;  
24 and in Mr. Mahoney's case, he had an assault and battery when  
25 he was 19, so he had a score of 2 on that item.

1           He does have a history of relationship instability, as  
2     characterized by the multiple restraining orders that have been  
3     placed against him by his prior women who he's been in a  
4     relationship with.

5           His employment history, when I interviewed him, he  
6     indicated that he had -- he described it as being laid off, but  
7     he also indicated that in that field, that basically meant that  
8     you were terminated; and he indicated that he was terminated  
9     three to four times because he had an argument with his  
10    supervisor.

11          Major mental illness, bipolar disorder which I've already  
12    discussed.

13          He has a history of early maladjustment. He reported to  
14    me that he had behavioral problems in school, that he was  
15    involved in fights and suspended from school and was combative  
16    in school. And he has a personality disorder, been diagnosed  
17    with a personality disorder, which I discussed earlier. And he  
18    has a history of prior supervision failure, which I also  
19    described earlier.

20    Q.    I'd like to take you through your application of the  
21    HCR-20 with respect to the clinical risk factors described.  
22    How did Mr. Mahoney score on those, and what was the basis for  
23    the score that you gave him?

24    A.    Well, these are all -- so I'll be pretty brief -- these  
25    are all factors which I've already discussed to some degree or

1 other: his lack of insight, his impulsivity. He has negative  
2 attitudes as they apply to life in general, things like failure  
3 to accept responsibility, a lack of empathy. He continues to  
4 exhibit active symptoms of mental illness, and he also has a  
5 clear history of impulsivity.

6 Q. What about the risk management or the future factors that  
7 you described that are part of the HCR-20, how did Mr. Mahoney  
8 score on those, and what's the basis for your scoring in that  
9 regard?

10 A. Well, the risk management items on the HCR-20 are, you  
11 know, they're a very important part of risk assessment, which  
12 is basically what type of setting and situation would the  
13 individual be placed in once they left whatever environment  
14 they're currently in. Any level of risk can be mitigated by  
15 certain types of circumstances. Sometimes those circumstances  
16 would be pretty severe things, like being placed in a locked  
17 cell by yourself, but that still mitigates risk. So you really  
18 have to take into consideration release issues, risk planning  
19 types of issues, and that's what these items are dealing with;  
20 whether the person has a plan in place, whether or not that's a  
21 realistic plan, whether or not the individual is likely to  
22 comply with whatever plan is in place and how likely they are  
23 to be exposed to stressors in the environment.

24 In Mr. Mahoney's case, as I've already testified, because  
25 he continues to exhibit symptoms of bipolar disorder, he

1 automatically is in the situation where he would have  
2 difficulty complying within treatment plans which are in place.  
3 His lack of insight would potentially interfere with his  
4 compliance with treatment. Based on the information that I  
5 have available to me, he does not have a good release  
6 destination or a supportive place to live. He will be exposed  
7 to any number of stressors in the community, which he's  
8 ill-equipped to deal with because of these continued symptoms.

9 A primary stressor for Mr. Mahoney for the past several  
10 years has been his requirement that he register as a sex  
11 offender, and even though the offense which initially brought  
12 him into the federal system has been dropped, he will be  
13 required to register as a sex offender again, so that continues  
14 to be a stressor for him following his release. There's been  
15 information which I've become aware of recently which indicates  
16 that he's already made statements suggesting he will not comply  
17 with release conditions.

18 Q. And what information did you become aware of?

19 MR. SCHNEIDER: Objection, your Honor.

20 THE COURT: What are you referring to?

21 THE WITNESS: I'm referring to a phone call that  
22 Mr. Mahoney made to his ex-girlfriend fairly recently.

23 THE COURT: Could you show me where that is. Is that  
24 the transcript?

25 MR. CALLAHAN: It's the transcript, and then we have

1 the actual call, your Honor. The transcript was done quickly,  
2 but we're prepared to play the call and --

3 THE COURT: I don't think I need to hear it if you've  
4 got the transcript. Well, can I at least see what you're  
5 referring to.

6 MR. CALLAHAN: Sure, sure. It's in the exhibit book,  
7 your Honor, Exhibit 20.

8 THE COURT: Exhibit 20?

9 MR. CALLAHAN: Yes.

10 THE COURT: What page? Do you have it?

11 MR. CALLAHAN: Exhibit 20 is the call, and the portion  
12 that Dr. Channell can refer to in his book refers to what he  
13 will do or what he won't do when he gets out.

14 THE COURT: Page?

15 MR. CALLAHAN: Let me find it. One moment, your  
16 Honor.

17 MR. SCHNEIDER: Your Honor, this is the exhibit that I  
18 was entering my objection to.

19 THE COURT: Well, that's overruled. I gave you a  
20 chance to respond to it because you got it at the last minute.

21 MR. SCHNEIDER: Right.

22 THE COURT: This is the transcript of his statements  
23 that he said he heard and it was his voice.

24 MR. SCHNEIDER: If he authenticates it.

25 MR. CALLAHAN: He stipulated to its authentication, to

1 the call's authentication.

2 MR. SCHNEIDER: I stipulated to the fact that the  
3 keeper of the record did not need to authenticate the fact that  
4 the transcripts were generated from tapes that were kept in the  
5 regular course of business at the institution, so there's no  
6 need for the keeper of the records --

7 THE COURT: I thought he testified it was his voice.  
8 Did you say that?

9 THE WITNESS: I did not, but it was clearly  
10 Mr. Mahoney's voice.

11 MR. CALLAHAN: That's why I wanted to play the tape,  
12 so Dr. Channell could identify Mr. Mahoney's voice. We have  
13 that queued up and ready.

14 THE COURT: I don't want to sit and listen to fifteen  
15 minutes of tape right now. Did you listen to it before you  
16 walked in here?

17 THE WITNESS: Yes.

18 THE COURT: And did you recognize the voice?

19 THE WITNESS: Yes.

20 THE COURT: And whose voice was it?

21 THE WITNESS: It was Mr. Mahoney's voice.

22 MR. SCHNEIDER: The only thing I would --

23 THE COURT: Has he heard it? Does he say it's --

24 MR. SCHNEIDER: We haven't had a chance to play it for  
25 him, no.

1 THE COURT: All right, so as I said, you'd have a  
2 chance to rebut it later on if you think it wasn't his. So  
3 what page are we looking at?

4 THE WITNESS: Well, the area that was concerning to me  
5 with regard to his release starts on Page 5, and basically at  
6 the bottom of Page 5, the woman with whom he was speaking, who  
7 is the individual with whom he plans to live upon his release,  
8 tells him that he can't actually live there. And over the  
9 course of the next few minutes, he talks about that he's aware  
10 of that, but when Dr. Kriegman calls her, to be sure to tell  
11 her that he can live there. And then later on, if you'll give  
12 me a moment just to find it --

13 Q. Did he say anything, Dr. Channell, about his willingness  
14 to take medication or be told what medication to take or where  
15 to go?

16 A. Yes. That's what I'm trying to find, exactly where that  
17 was.

18 (Witness examining transcript.)

19 A. It's on Page 13. He says, "I already told him that  
20 they're not going to dictate where I go because I'm up in Dover  
21 right now, and Dover gives me Xanax morning, noon, and night."

22 Q. And does he continue after that to talk about whether he  
23 can be told where to go, at Line 10 to 13?

24 A. Yes, he does.

25 Q. What does he say?

1 A. Where are you?

2 Q. On Page 13, Line 10 to 13.

3 A. He says, "And that's a powerful drug," talking about the  
4 Xanax. "That's the one I'm wanting to go back on. You know  
5 what I mean? And so nobody's going to tell me, like, where I  
6 should go. You're not going to tell me." And she says, "Well,  
7 no, they can't." And he says, "Go to the Lynn Community  
8 Center."

9 Q. And this is information, Dr. Channell, that you became  
10 aware of after scoring the HCR-20 and after providing your  
11 first two reports at Exhibits 1 and 2?

12 A. Yes. I only became aware of this early this week because  
13 the call was placed, I believe, last week.

14 Q. And what impact does that have on your view of the five  
15 risk management factors that are part of the HCR-20?

16 A. Well, it indicates that even prior to being released, he's  
17 already expressed an opinion that he is not going to be told  
18 where he can go or what medication he will take, which is kind  
19 of what I've indicated before, is that he believes that he  
20 knows exactly what medication he needs, and that's what he's  
21 going to take when he gets out, and nobody will tell him  
22 otherwise, nor will they tell him where he's going to reside.  
23 And also it indicates to me that he's not -- you know,  
24 obviously there's some issue with regard to the validity of his  
25 release plan to be able to live with the person with whom he

1 was talking. She's clearly telling him he can't stay there,  
2 yet the two of them have indicated that they will communicate  
3 to anyone who calls to ask them if he can stay there, that he  
4 would stay there. That's deceitful and clearly not part of a  
5 type of mindset that you'd like to have a person to have as  
6 they were entering into a release plan. You want them to be on  
7 board with it. That's the most likely way the plan will  
8 succeed; and that they will remain in the community, that  
9 they'll succeed, and that no one will come to harm in the  
10 community; and this indicates to me that those things are not  
11 in place at this point in time.

12 Q. And did you come away from reading at the bottom of Page 5  
13 that the female with whom he was speaking was telling him that  
14 he can't really live with her?

15 A. Yes.

16 Q. You also used something called the Violence Risk Appraisal  
17 Guide in arriving at your conclusion. What is the Violence  
18 Risk Appraisal Guide?

19 A. The Violence Risk Appraisal Guide is also a risk  
20 assessment instrument. It is an actuarial instrument, and  
21 basically what that means is that it deals with -- it  
22 identifies empirically validated factors which have been found  
23 to be correlated with violent recidivism, and the individual  
24 is -- basically you score the instrument based upon whether or  
25 not these certain characteristics are present for that

1 individual, and then you arrive at a score which provides  
2 outcome data for the group of individuals on which the test was  
3 validated, with which you can compare the individual in  
4 question's overall risk.

5 Q. Who uses the VRAG, as it's sometimes called?

6 A. It would be the same types of clinicians who would be  
7 using the HCR-20. Basically it would be used by a clinician  
8 who was interested in using an instrument which would assist in  
9 their overall violence risk assessment.

10 Q. How long has the VRAG been in use?

11 A. Since 1993.

12 Q. And is it supported by research?

13 A. There is a large amount of research concerning the VRAG.  
14 There's information relevant to its reliability indicating  
15 that, you know, different clinicians who utilize the instrument  
16 tend to arrive at comparable scores, and there is also  
17 information which -- earlier when I talked about the area under  
18 the curve, the zero, .5, and 1, with the .5 being a chance  
19 prediction and 1 being perfect prediction, the AUC data that  
20 applies to the VRAG is similar to the HCR-20. The publishers  
21 indicate that that tends to fall around .73 or .75, and there's  
22 other data that indicates -- there are about thirty different  
23 studies that indicate an AUC of about .72 for the VRAG as far  
24 as its validity.

25 Q. So the VRAG has been subject to some peer review?

1 A. Yes. Quite a bit.

2 Q. Okay. And it's been used in courts throughout the  
3 country, to your understanding?

4 A. Yes, it has.

5 Q. Has it been used in courts within this district?

6 A. Yes.

7 Q. How many times have you administered the VRAG?

8 A. The VRAG is also one that I rely on as part of an overall  
9 risk assessment, so I've probably used it about fifty times.

10 Q. And how does the VRAG work?

11 A. Well, as I said, basically the way it was designed was,  
12 there were fifty variables which the individuals who designed  
13 the instrument considered. And they assessed a number of men  
14 who had been incarcerated or held in relation to a violent  
15 offense, and then looked at their case again at a later point  
16 in time -- in this case, seven years -- to determine whether or  
17 not they had recidivated, whether or not they had committed  
18 another violent offense.

19 THE COURT: Is that how "recidivated" is defined, as a  
20 violent offense?

21 THE WITNESS: Well, violent recidivism would be a  
22 violent offense. I mean, recidivism can obviously also refer  
23 to just criminal recidivism, but in these studies, it is  
24 defined as the reoccurrence of another violent offense, yes.

25 So once they've identified the individuals who go on

1 to engage in violent behavior, they took a look at all these  
2 factors and found the ones which were most strongly positively  
3 or negatively correlated with violence, so ones that either  
4 indicated the person was more likely to go on and engage in  
5 violent behavior, or ones that made it less likely that they  
6 would go on to engage in violent behavior; and those  
7 instruments which had the strongest correlations are the ones  
8 that ended up on the actual instrument.

9 And then for the evaluator who's using it, basically  
10 you would consider these criteria, which are all static  
11 criteria. And what that means is, these are all historical  
12 factors that will never change. It doesn't matter whether the  
13 person -- you know, how old they are at the present time or  
14 whether or not they've been in treatment or any of these types  
15 of things. These are static factors that will remain the same  
16 over time, and you look at those items. There's a clear  
17 description as to how these items --

18 THE COURT: They don't take into account if you were  
19 to put someone on the correct medications?

20 THE WITNESS: No. Something like the VRAG, the  
21 primary difference between something like the VRAG and the  
22 HCR-20 was, the HCR-20 does consider those variables. Those  
23 are called "dynamic variables," things that change. The HCR-20  
24 does consider that.

25 THE COURT: So under this, he'll always --

1           THE WITNESS: He will always score high on the VRAG,  
2 always.

3           THE COURT: So regardless of whatever I do, if you put  
4 him on the right medications with the right treatment regimen  
5 and the right housing situation, he's always going to score  
6 this?

7           THE WITNESS: Correct.

8           THE COURT: Whereas in the other instruments, he moves  
9 up, or I don't know what the right --

10          THE WITNESS: Well, as those things are no longer a  
11 concerning score would decrease on the HCR-20, yes.

12 Q. Is there a reason why you use both the HCR-20 and the  
13 VRAG, Dr. Channell?

14 A. Well, there's a lot of -- there is disagreement in the  
15 field about the different types of instruments which are used.  
16 There are certainly a large number of clinicians and  
17 researchers who would say that the best type of risk assessment  
18 is to use an actuarial, and that you should use that as it is  
19 and not adjust it in any way for factors like being on  
20 medication.

21 Q. And the VRAG is an actuarial instrument; is that correct?

22 A. The VRAG is an actuarial instrument.

23          THE COURT: But they stopped using those in the sex  
24 offender area, right, because they wanted to take into account  
25 the dynamic factors?

1           THE WITNESS: Well, I mean, that's the debate. I  
2 mean, the Static-99 is an actuarial instrument, and it is very  
3 widely used in the sex offender field. They have stopped using  
4 it, but there is certainly a large contingent of evaluators who  
5 would argue that you should take into account dynamic risk  
6 factors.

7           THE COURT: So I believe when I would do them, I would  
8 get both, right, in the sense of people would take into account  
9 both? In other words, whether you --

10          THE WITNESS: I'm not aware in that specific instance,  
11 but what I'm saying, in this case, that is why I use both. I  
12 use the VRAG because that is an actuarial instrument, and the  
13 HCR-20 because it is a structure clinical judgment which takes  
14 into account dynamic risk factors.

15          The data, the outcome data tends to be fairly similar  
16 with regard to the predictive validity of the two instruments,  
17 and they all tend to fall around .70, which is what I  
18 indicated.

19          THE COURT: For all three of these?

20          THE WITNESS: Well, for these two, for the VRAG and  
21 the HCR-20. The PCL-R isn't technically a risk assessment  
22 instrument.

23 Q. Again, the PCL-R is something you used to inform or it was  
24 one piece of many of the other two risk assessment tools you  
25 used, the VRAG and the HCR-20; is that correct?

1 A. That's correct.

2 Q. When you applied the VRAG to Mr. Mahoney, what score did  
3 he receive?

4 A. He received a score of 15. A score on the VRAG can range  
5 anywhere from negative 26 up to 38. His score fell into Risk  
6 Category 7, and basically what that score indicates is that  
7 among these individuals in that development sample that I  
8 referred to earlier, individuals who were considered, looked  
9 at, only 15 percent of them had a score that was higher than  
10 that which was obtained here, and 85 percent of them obtained a  
11 score which was lower. Actuarial instruments like the VRAG  
12 will provide a specific likelihood of recidivism as it applies  
13 to that group data, and in this case it was 55 percent; and  
14 that group went on to commit another violent offense within  
15 seven years, and that 64 percent of them went on to commit a  
16 violent offense within ten years.

17 Q. Within an average of those years, an average of ten years  
18 or an average of seven years?

19 A. Yes.

20 Q. Do you know whether a suitable state facility was willing  
21 to accept Mr. Mahoney?

22 A. I know one was not willing to accept him.

23 Q. And is that identified at --

24 (Discussion off the record.)

25 Q. Do you know whether a suitable state facility was willing

1 to take Mr. Mahoney into custody?

2 A. No, there was no state facility willing to take him into  
3 custody.

4 Q. Okay. And is that what's identified at Exhibit 3 in the  
5 booklet in front of you, the letter from the New Hampshire  
6 hospital?

7 A. That's correct.

8 THE COURT: Can I ask, are those pro forma -- I always  
9 get that answer. Maybe they just assume Uncle Sam has more  
10 money. But do you ever get a state saying, "We're willing to  
11 take these people"?

12 THE WITNESS: Almost never. Never at this point in  
13 the process, we never had a state that was willing to accept an  
14 individual based on the interstate compact. I think your  
15 assertion is correct, most of the time is that they're taxed  
16 with dealing with the people they already have in their  
17 facilities and don't want to take on another individual when  
18 they're already being provided care in the federal system.

19 Q. And this Certificate of Dangerousness Due to Mental  
20 Disease Or Defect, is that at Exhibit 21? Do you have that in  
21 front of you? I'm just going to ask you, is that signed by the  
22 warden at FMC Devens?

23 A. Yes.

24 Q. Just to touch briefly upon the prospect for a release plan  
25 for Mr. Mahoney, if he were released today, would he be subject

1 to any period of supervised release?

2 A. No.

3 Q. Would there be any ability for authorities to monitor his  
4 behavior or insure he was taking his medication, anything like  
5 that?

6 A. No.

7 Q. Based on the materials you reviewed, do you have an  
8 opinion of whether a condition of release is appropriate for  
9 him at this time?

10 A. I don't believe it is appropriate at this time.

11 THE COURT: Is it lawful even? In other words, do you  
12 have the authority to release him to a halfway house?

13 THE WITNESS: We could not place him in a halfway  
14 house if he were to --

15 THE COURT: Is that clinically or legally?

16 THE WITNESS: Legally, because he has no standing with  
17 regard to a halfway house. We would place them in a group  
18 home, is typically where we place the individuals.

19 THE COURT: And they would still be within the BOP  
20 jurisdiction?

21 THE WITNESS: They would be under the jurisdiction of  
22 the U.S. Marshal -- or the U.S. Probation at that point in  
23 time.

24 THE COURT: But he can't be because he's not on  
25 supervised release?

1           THE WITNESS: At this time there's nothing. You know,  
2 if he were civilly committed and placed under conditional  
3 release, he would be under the supervision of U.S. Probation.

4           THE COURT: If I civilly committed him, you would have  
5 the ability, if he got better under the lithium, to put him in  
6 a halfway house or a group home?

7           THE WITNESS: A group home, correct, yes.

8 Q. And what is your opinion that he is not appropriate for  
9 conditional release at this point in time? What is that based  
10 on?

11 A. Well, it's primarily based two reasons: One, that his  
12 symptoms are not well controlled at this point, and, two, that  
13 clearly there's not a release plan in place that would be  
14 likely to be successful for Mr. Mahoney.

15 Q. Is that further supported in any regard by the phone call  
16 that you listened to?

17 A. Yes.

18 Q. What would be the course of treatment for Mr. Mahoney if  
19 he was placed in custody at Devens?

20 A. We would continue to work with him to try and gain his  
21 cooperation with regard to additional medication; and assuming  
22 he would improve on the medication, we would also encourage him  
23 to participate in individual counseling and attend treatment  
24 groups.

25 Q. What would be the goal for Mr. Mahoney if he was civilly

1 committed?

2 A. The goal would ultimately be that he benefit from  
3 treatment and that we could conditionally release him back to  
4 the community.

5 Q. In your opinion, does Mr. Mahoney presently suffer from a  
6 mental disease or defect?

7 A. Yes, he does.

8 Q. In your opinion, as a result of that mental disease or  
9 defect, would his release create a substantial risk of bodily  
10 injury to another person or serious damage to the property of  
11 another?

12 A. It's my opinion that it would, yes.

13 Q. Just looking at Exhibits 1 and 2, are these the two risk  
14 assessment reports that you authored?

15 (Witness examining documents.)

16 A. Yes.

17 MR. CALLAHAN: The government would like to move those  
18 into evidence as well as the uncontested exhibits in the  
19 exhibit binder, Exhibits 1 to 21, with the exception of at this  
20 point, with the exception of the October 2, 2013 letter, which  
21 is Exhibit 12. I think that's the letter that you were talking  
22 about earlier, your Honor.

23 THE COURT: I allow that.

24 (Exhibits 1-11 and 13-20 received in evidence.)

25 MR. SCHNEIDER: And I have no objection insofar as

1 they go to the expert's testimony under Rule 702, but in terms  
2 of the actual substantive admissibility of these other  
3 documents, I would object.

4 MR. CALLAHAN: And, your Honor, before we came in, we  
5 agreed those would be stipulated to. It wasn't until your  
6 comment about the Federal Rules of Evidence applying.  
7 Mr. Schneider agreed because he specifically objected to the  
8 call, and he specifically objected to the October 1 letter that  
9 he would not agree to.

10 THE COURT: Is this a new position?

11 MR. CALLAHAN: This is a new position based on what we  
12 discussed this morning because he said -- if I could just  
13 finish, your Honor -- he said the only two he was going to  
14 object to was the October 1, 2013 letter from the inmate and  
15 the call. And I asked him what his grounds were for the  
16 letter. He said hearsay. I asked him what the grounds were  
17 for the call, and he said he was going to get back to me and  
18 tell me about it. But as to the others, we agreed, and that's  
19 why we went ahead and put stickers on them, your Honor. It  
20 wasn't for identification purposes. It was because they were  
21 stipulated and they would be admitted. And I agreed that he  
22 could admit the --

23 THE COURT: I actually thought I already admitted  
24 them.

25 MR. CALLAHAN: I just want to be clear.

1 THE COURT: So I don't have time because I have a  
2 twelve o'clock call. You should confer. But that is creating  
3 a big issue. If they didn't expect it, then I need to let them  
4 come in and bring on witnesses, or decide whether I take them  
5 in as public records or business records, these incident  
6 reports.

7 MR. SCHNEIDER: Well, your Honor, if I may, at the  
8 very beginning of the hearing, all I said was that I had no  
9 objection under Rule 702. These are things that clearly the  
10 expert uses, the basis for --

11 THE COURT: I didn't hear that. I heard that with  
12 respect -- but the truth is that I've got to go upstairs right  
13 this minute. You should confer. But then I'm going to have to  
14 go through an elaborate briefing process as to whether they  
15 qualify as public records, business records, whether I let him  
16 bring in individual people who made the reports. It complicates  
17 things. It complicates things.

18 So we will be back at -- why don't we take our lunch  
19 break now, actually, and then we'll come back at 1:00. We can  
20 go till 3:00. I'm assuming you'll finish the cross by 3:00. I  
21 don't know if I'm going to get to your doctor today. We have a  
22 couple of scheduling conferences, and then we can go back on  
23 the record around 3:00. In other words, around 3:15 you can  
24 take a break, I can put him on, or we can defer it until we  
25 figure out the *Daubert* issue. So think about that, all right?

1 MR. CALLAHAN: Thank you, your Honor.

2 THE COURT: I mean, I've got just a few little minor  
3 things this afternoon, so I'm planning to go till 5:00 with you  
4 all. I'm not sure we'll finish. All right, thank you.

5 MR. CALLAHAN: Thank you, your Honor.

6 (Noon Recess, 11:59 a.m.)

7 (Resumed, 1:17 p.m.)

8 MR. SCHNEIDER: Thank you, your Honor.

9 CROSS-EXAMINATION BY MR. SCHNEIDER:

10 Q. Good afternoon, Dr. Channell.

11 A. Good afternoon.

12 Q. So Mr. Mahoney has been at Devens since August of 2012; is  
13 that right?

14 A. Yes.

15 Q. And you're aware that during that time, he was being held  
16 there while a federal charge in New Hampshire District Court  
17 was pending, right?

18 A. Correct.

19 Q. And that was a failure-to-register charge?

20 A. Yes.

21 Q. A nonviolent felony?

22 A. Yes.

23 Q. A nonviolent felony?

24 A. Yes.

25 Q. And you're also aware that that charge was just dismissed

1 in March of this year, just a few months ago?

2 A. Yes.

3 Q. And so he's only being held now on this 4246 matter?

4 A. That's correct.

5 Q. You're also aware that Mr. Mahoney was first arrested back  
6 in November, 2010?

7 A. Yes.

8 Q. So he's been held over 43 months, right, at this point?

9 A. Yes.

10 Q. And that's for a charge that ultimately ended up being  
11 dismissed?

12 A. My understanding was, the charge was dismissed after he  
13 was found not competent, not restorable, but, yes, the charge  
14 was dismissed.

15 Q. The charge was dismissed?

16 A. Correct.

17 Q. Now, you testified that since Mr. Mahoney has been at  
18 Devens, that you've seen him approximately ten times; is that  
19 right?

20 A. That's correct.

21 Q. For a total of what you estimated to be about seven hours?

22 A. Yes.

23 Q. So since August of 2012, about two years, you've seen  
24 Mr. Mahoney only a total of seven hours that entire time?

25 A. Formal contacts where we would have sat down in an office

1 together, yes.

2 Q. Now, you've written several reports in this case, some of  
3 which were referred to this morning, right?

4 A. Yes. I've written three reports, two in relation to the  
5 46 issue and one in relation to the competency issue.

6 Q. So the competency one was January 16, 2013, and that was  
7 about the non-restorability issue?

8 A. Correct.

9 Q. And the 5/9 or 5/30 -- by the way, is there a difference  
10 between the two reports because I've seen that one seems to be  
11 labeled 5/9/2013 and the other is 5/30/2013? Is there a  
12 difference in those two reports?

13 A. The initial 46 paperwork?

14 Q. Correct, yes.

15 A. Well, the initial 46 was ordered by the court in  
16 New Hampshire. It was ordered after the judge ruled that he  
17 was not competent and not responsible. So the initial report  
18 was the one submitted to the judge in New Hampshire. Because  
19 we offered the opinion that Mr. Mahoney wouldn't meet criteria  
20 for civil commitment, we have to file the report within the  
21 jurisdiction where he's currently housed, which was  
22 Massachusetts. It's the same report. It's basically, one was  
23 filed initially with the court in New Hampshire, and then when  
24 we filed the certificate here in Massachusetts, we filed the  
25 second report.

1 Q. I see. So you essentially have the one report essentially  
2 of May, 2013?

3 A. Yes.

4 Q. And the second report of December 13, 2013?

5 A. Correct.

6 Q. And that was your updated addendum?

7 A. Yes.

8 Q. And that's the most recent report that you filed in this  
9 thing?

10 A. That's correct.

11 Q. So you haven't updated that report?

12 A. No. There have been no requests. That was a request that  
13 I believe was from the U.S. Attorney's Office that we provide  
14 an addendum to the report.

15 Q. So the last report that you filed in this thing is over  
16 six months old at this point; is that fair to say?

17 A. Close to that, yes.

18 THE COURT: And have you checked to see whether or not  
19 anything has changed in the intervening six months?

20 THE WITNESS: I've reviewed all of his medical records  
21 and any incidents which have occurred during those six months,  
22 yes.

23 THE COURT: And has anything materially changed your  
24 diagnosis?

25 THE WITNESS: No.

1           THE COURT: Is he using any other drugs, or is it  
2 still the Seroquel and the Klonopin?

3           THE WITNESS: It's still the Seroquel and Klonopin.

4           Q. And you've written the May and the December reports  
5 basically to support your conclusion that Mr. Mahoney is  
6 dangerous under Section 4246? That's the purpose of those  
7 reports?

8           A. Yes.

9           Q. By the way, when you see inmates like Mr. Mahoney in your  
10 capacity of evaluating or testing, how many inmates are you  
11 handling at any one time?

12          A. Well, there are approximately, you know -- I'm not really  
13 sure how to answer the question with regard to how many inmates  
14 I'm handling. I carry a fairly small forensic case load of  
15 studies for competency and criminal responsibility, so I may  
16 have ten of those cases at any given time. And then we have  
17 approximately sixty civilly committed guys. My only role with  
18 regard to them is reviewing their cases and interviewing them  
19 for risk panel, and that happens over the course of a year. We  
20 meet every two weeks, so it's spread out over that period of  
21 time. I'm not sure if that answers your question or not.

22          Q. Sure. So over the course of a year, you do have to review  
23 the case files of at least sixty inmates?

24          A. Yes.

25          Q. By the way, with respect to Mr. Mahoney, at what point in

1 your evaluation of Mr. Mahoney did you decide that he was  
2 dangerous under Section 4246?

3 A. It would have been after the court in New Hampshire  
4 ordered the evaluation for a 4246, pursuant to 4246.

5 Q. Did you have a feeling which way you were going to end up  
6 on that before you proceeded to do that examination?

7 A. No. I hadn't really focused much on his violence history  
8 at that point other than to report what I had available in the  
9 records. But that wasn't a referral issue, so at that point I  
10 was primarily focused on the issue of competency. I was aware  
11 of a number of things that he had done and statements that he  
12 had made, but I hadn't arrived at any type of opinion with  
13 regard to --

14 Q. Now, the prosecutor asked you this morning about a  
15 statement I made in opening statements suggesting that Devens  
16 can be a scary and dangerous place. Remember that?

17 A. Yes.

18 Q. It's fair to say -- first of all, there's a general  
19 population there, right?

20 A. There's a small general population.

21 Q. How large is the general population?

22 A. A couple hundred inmates. We have over a thousand there,  
23 but I couldn't say exactly.

24 Q. You have over a thousand --

25 A. Inmates.

1 Q. -- inmates?

2 A. In general.

3 Q. In general?

4 A. That would include medical, psychology, mental health, and  
5 there's also a sex offender management treatment program there.

6 Q. So in the general population, I take it that occasionally  
7 there are arguments and fights?

8 A. Well, occasionally there are arguments and fights in all  
9 of the populations there.

10 Q. It's true of all prisons, right?

11 A. Yes.

12 Q. And there are disciplinary proceedings and there are  
13 lockdowns and all that sort of stuff, right?

14 A. We haven't had a lockdown in the almost ten years that  
15 I've been there.

16 Q. You haven't had any calls out where you've had to sort of  
17 secure the facility and everyone had to stay in place while  
18 some fight or other matter was being resolved?

19 A. We've had those instances. Those aren't lockdowns.  
20 Lockdown would be a prolonged period of time where the  
21 institution would be locked down basically.

22 Q. The kind of incident I referred to, what would you call  
23 it?

24 A. Those would be called basically staff assistance, body  
25 alarms. They typically last, you know, fifteen minutes, half

1 an hour until it's resolved.

2 Q. And how many times a week do they occur?

3 A. Once or twice maybe, some weeks not at all, some weeks  
4 more. You know, I couldn't say. It's not consistent.

5 Q. Now, in the general population at Devens, there's a  
6 mixture of both inmates who have been sentenced as well as  
7 detainees awaiting trial; is that right?

8 A. Yes. The detainees awaiting trial would be the forensic  
9 studies, but, yes, we have pretrial inmates and sentenced  
10 inmates.

11 Q. And many of them are actually housed together, correct?

12 A. The inmate has the choice to either be housed with  
13 convicted inmates or not; but if they state that they are okay  
14 with that, they are housed together, yes.

15 Q. So the inmate gets to choose whether they want someone who  
16 has been convicted of a crime?

17 A. If they're willing to be housed with convicted inmates,  
18 yes.

19 Q. And some actually choose that?

20 A. Yes.

21 Q. Are you aware whether Mr. Mahoney has actually been housed  
22 with a sentenced inmate with convictions on his record for  
23 homicide, for example? Are you aware of that?

24 A. I don't know if he's been housed with an inmate with a  
25 conviction for homicide or not. I know that he has been housed

1 with convicted inmates.

2 Q. Are you aware that he has been housed with people that he  
3 hasn't felt completely comfortable with?

4 A. I'm sure he has, yes.

5 Q. And when you're in an institution in Mr. Mahoney's  
6 situation and the correction officers give you orders, you have  
7 to obey them, right?

8 A. Well, clearly you don't have to obey them because there  
9 has been a number of instances where he's failed to obey them.

10 Q. But if you don't obey them, then there are consequences  
11 typically?

12 A. Absolutely.

13 Q. And the staff, too, can issue orders, right?

14 A. Staff can issue orders?

15 Q. Yes, the psychological staff, the psychiatry staff can  
16 issue orders to inmates?

17 A. Sure.

18 Q. And the nurses?

19 A. Sure.

20 Q. And the inmates have to obey?

21 A. Well, if they don't obey, there are consequences. It's  
22 their choice whether or not they obey.

23 Q. Certainly, but it's a highly regimented setting?

24 A. It's a controlled environment, yes.

25 Q. When they tell you to take your medications, you take your

1 medications?

2 A. Well, no. I mean, we don't -- unless an inmate is court  
3 ordered to take their medication, there's not a consequence if  
4 they don't take their medication.

5 Q. Yes, but isn't there a certain time of day when the nurse  
6 has the medication cart and the inmates --

7 A. Yes. They have pill line when they're expected to show  
8 up.

9 Q. They can't just show up anytime they want to?

10 A. No, they can't.

11 Q. And there are specific periods when they have to decide  
12 when to eat and when to shower, right?

13 A. Uhm, primarily eating. I mean, they have a lot more  
14 freedom about when they're going to shower, but eating is a  
15 very structured time.

16 Q. These aren't the comforts of home or even a residential  
17 home when you're at Devens, right?

18 A. No. It's a prison.

19 THE COURT: I get that point.

20 A. It's a psychiatric hospital within a prison.

21 Q. Right. And in addition to the general population, very  
22 briefly, there's a segregated housing unit or a special housing  
23 unit, a SHU?

24 A. We have two special housing units.

25 Q. And when you're in one of the special housing units,

1     you're in a cell with a metal door and a slit for food, right?

2     A.     Yes.

3     Q.     And you're alone 23 hours, 23-hour lock down?

4     A.     Yes.

5     Q.     And you have an open shower and toilet in your cell?

6     A.     Yes.

7     Q.     And so when guards come by, they can see you doing  
8     whatever you're doing at the time?

9     A.     Yes.

10    Q.     And you're aware that Mr. Mahoney has been in the SHU for  
11    a period of time?

12    A.     Certainly, yes.

13    Q.     And you're aware that Mr. Mahoney and you testified that  
14    Mr. Mahoney was on suicide watch for a number of days?

15    A.     That's correct, earlier this year.

16    Q.     In suicide watch, the inmates are just given blankets and  
17    ponchos?

18    A.     Some of them, yes.

19    Q.     They're specifically not given any clothing?

20    A.     That's decided on a case-by-case basis.

21    Q.     Well, are you aware that when Mr. Mahoney was on suicide  
22    watch, he didn't have any clothing?

23    A.     I am, yes.

24           THE COURT:   When was he in suicide watch?

25           THE WITNESS:   That was in January of this year.

1 THE COURT: For what? What triggered that?

2 THE WITNESS: What he indicated had triggered it was  
3 that he was upset over a continuance in this legal matter.

4 THE COURT: In this?

5 THE WITNESS: That his hearing date had been  
6 postponed, I believe. And then as he was on suicide watch, he  
7 wanted a legal call, and as I testified this morning, he was  
8 demanding that. He actually refused to eat for several days,  
9 stating that he wouldn't eat until he got what he was requesting.

10 Q. If I may, but in general, Mr. Mahoney has not complained  
11 of suicidal ideation or homicidal ideation since he's been at  
12 Devens; is that fair to say?

13 A. He's never made any statements that I'm aware of to  
14 indicate he was suicidal prior to that or since.

15 Q. Now, would you agree with the notion that incarceration,  
16 and especially isolation, can sometimes aggravate a mental  
17 condition?

18 A. Yes.

19 Q. And can it aggravate someone suffering from bipolar  
20 disorder?

21 A. Yes.

22 Q. Now, your diagnosis of Mr. Mahoney is that he now suffers  
23 from Bipolar Disorder I?

24 A. Yes.

25 Q. And the previous diagnoses of Dr. Mart and Dr. Kissin were

1 that he was suffering from Bipolar II?

2 A. Dr. Mart diagnosed him with bipolar disorder not otherwise  
3 specified.

4 Q. Not otherwise specified. And the main difference, as you  
5 testified to the Court, is that Bipolar I means that the  
6 subject has had a full-blown manic episode?

7 A. Yes, at any point during their life.

8 Q. And at any point, once they've had that full-blown manic  
9 episode, they're Bipolar I forever after?

10 A. Yes.

11 Q. And the fact is, his first diagnosis of Bipolar I came  
12 only after he had been at Devens for a substantial period of  
13 time?

14 A. I believe that's correct, yes.

15 Q. Now, you testified a little bit about the question of  
16 insight. You are aware that Mr. Mahoney is fully aware that he  
17 suffers from bipolar disorder?

18 A. He's aware that that's his diagnosis, yes.

19 Q. And he's aware that he needs to take some medications to  
20 keep him at least somewhat stable, right?

21 A. Yes.

22 Q. Now, with respect to generally the diagnosis of bipolar  
23 disorder, many Americans live with it, I take it, without  
24 hospitalization?

25 A. Yes.

1 Q. And without being in any residential setting, secured  
2 residential setting?

3 A. Yes. I mean, the medications for bipolar disorder are for  
4 the most part fairly successful with regard to treating  
5 symptoms, and as long as individuals are compliant, the vast  
6 majority of them are able to function well in the community.

7 THE COURT: So would your prediction be, if he  
8 followed the recommendation, say, of lithium, or whatever group  
9 of medications, that he'd be able to function?

10 THE WITNESS: It's hard to say in his case because,  
11 you know, I've never -- I'm not aware of a sustained period of  
12 time where he's taken those medications during which we would  
13 have been able to see how he responded. I mean, there are some  
14 people who are treatment-resistant and even with medication  
15 continue to exhibit symptoms. I could certainly say I think it  
16 would be more likely that he would be able to function  
17 adequately if he were on an appropriate medication regimen.

18 Q. But with respect to medications, so you testified that  
19 he's now on Seroquel and Klonopin?

20 A. Yes.

21 Q. And he has been for some time?

22 A. Yes.

23 Q. And he willingly takes those?

24 A. Yes.

25 Q. And he's actually been quite compliant since maybe as far

1 back as March of 2013?

2 A. Yes.

3 Q. So that's over thirteen months, right?

4 A. Yes.

5 Q. And you testified that while lithium is a mood stabilizer,  
6 Seroquel, in addition to being an antipsychotic, is also a mood  
7 stabilizer?

8 A. Yes.

9 Q. Now, Mr. Mahoney, you had reviewed the Avis Goodwin  
10 records?

11 A. I did, yes.

12 Q. And you are aware that at that time -- I think you  
13 testified to it -- that Mr. Mahoney was on Xanax?

14 A. Yes.

15 Q. And that's also an anxiolytic?

16 A. Yes.

17 Q. And that's something that can be for certain individuals a  
18 more powerful anxiolytic than Klonopin?

19 A. Uhm, well, again, I'm not a psychiatrist. I would  
20 disagree with that characterization. Xanax is a very  
21 short-acting anxiolytic, whereas Klonopin is a longer-acting  
22 medication that requires less -- you take a single dose, for  
23 example, as opposed to having to take several Xanax over a  
24 period of time. So, you know, I can't agree to that statement,  
25 but, again, I may not be the best person to ask that type of

1 question either.

2 Q. Well, different individuals react differently to different  
3 anxiolytic medications, right?

4 A. Yes.

5 Q. And if Mr. Mahoney reported that he felt calmer and  
6 quieter and he actually had a more quiescent period in his life  
7 outside of the prison wall while on Xanax, would it be fair to  
8 say that Xanax would have been a more effective anxiolytic than  
9 the Klonopin?

10 A. Well, during the time that I've known Mr. Mahoney, there  
11 have been a number of times he's indicated he felt calm and was  
12 fine and wasn't having problems, only to shortly thereafter  
13 have some type of outburst where he became very agitated and  
14 upset. So I guess -- I guess I couldn't completely agree with  
15 that statement. I mean, his perception may be that he was  
16 doing fine while he was on it. That doesn't necessarily mean  
17 that he was doing fine while he was on it.

18 Q. By the way, is Xanax something that's prescribed at  
19 Devens?

20 A. No.

21 Q. Why not?

22 A. In fact, Klonopin is a non-formulary medication. Those  
23 medications have a high propensity for addiction and abuse, so  
24 they are rarely prescribed in a correctional setting. They  
25 made a non-formulary request in Mr. Mahoney's case in order to

1 provide him the Klonopin.

2 Q. Are they truly addictive if someone needs them for  
3 therapeutic reasons?

4 A. They're addictive regardless. Whether or not the person  
5 actually abuses them or not is another question, but an  
6 individual will develop tolerance to anxiolytic medications,  
7 and by definition, they are addictive.

8 THE COURT: What does "anxiolytic" mean?

9 THE WITNESS: They're used to treat anxiety.

10 THE COURT: So is treating anxiety the same as  
11 treating bipolar?

12 THE WITNESS: No. I'm not familiar with individuals  
13 who have successfully been treated for bipolar disorder with an  
14 anxiolytic. It may be beneficial in addition to other  
15 medications but certainly not alone.

16 Q. You mentioned the concerns about addiction.

17 A. Yes.

18 Q. But bipolar is a chronic condition?

19 A. Bipolar disorder is a chronic condition.

20 Q. Bipolar disorder. So Mr. Mahoney is going to live with it  
21 for the rest of his life?

22 A. Yes.

23 Q. He's going to have to be on some sort of medications for  
24 the rest of his life if he wants to control it?

25 A. He should be on medication, yes. Yes, that's correct.

1 Q. And if he needs an anxiolytic, it's going to be prescribed  
2 for him whether it's addictive or not?

3 A. Yes.

4 Q. Now, you testified a bit about lithium and that  
5 essentially you tried it on him or the institution did or the  
6 team did between December of 2012 and the end of January of  
7 2013.

8 A. That's correct.

9 Q. And it was your testimony -- it's in your report -- at  
10 some point toward the end of January, after being somewhat  
11 compliant, Mr. Mahoney refused it?

12 A. That's correct.

13 Q. So you started to go into a little bit of this this  
14 morning. Lithium does have side effects?

15 A. Yes, it does.

16 Q. And in fact a lot of people who are started on lithium  
17 complain of side effects?

18 A. Yes.

19 Q. And you mentioned dry mouth?

20 A. Yes.

21 Q. It can also cause mental confusion for some?

22 A. Yes.

23 Q. It can also cause nausea?

24 A. Correct.

25 Q. And gastrointestinal bathroom-related issues?

1 A. Correct.

2 Q. And it also requires very periodic blood tests to  
3 calibrate the level of lithium?

4 A. That's correct.

5 Q. And the reason is, lithium in fact is actually potentially  
6 very toxic to the kidneys?

7 A. Correct.

8 Q. And one of the things that's unusual about lithium is that  
9 the gap between therapeutic levels and toxic levels is actually  
10 quite small?

11 A. That's a level of specificity that, you know, is just  
12 beyond my scope of competence. I couldn't say. I know that an  
13 individual certainly can become toxic on lithium, so that it is  
14 recommended that they have periodic blood tests.

15 Q. And you're not aware of that because you're a psychologist  
16 and not a psychiatrist?

17 A. That's correct.

18 Q. Now, there are other meds that are typically used to treat  
19 mood instability and bipolar disorder?

20 A. In addition --

21 Q. In addition to lithium?

22 A. Yes.

23 Q. And in addition to Seroquel?

24 A. Yes.

25 Q. So Mr. Mahoney willingly tried the Depakote?

1 A. He did try Depakote.

2 Q. And it was discontinued because he complained of a rash?

3 A. That is correct.

4 Q. It's not unusual for people prescribed Depakote to have a  
5 rash?

6 A. That's correct.

7 Q. So that was an appropriate judgment on his part to  
8 discontinue it?

9 A. Yes. His psychiatrist, if he didn't stop it himself, his  
10 psychiatrist would have discontinued it.

11 Q. Do you know whether any other substitutes for lithium have  
12 been tried with respect to Mr. Mahoney?

13 A. He did take Trileptal at one point in time. That would  
14 have been --

15 (Witness examining document.)

16 A. -- back in 2011, but I don't really know any information  
17 other than that it was prescribed. I don't know how compliant  
18 he was or what the treatment effect was.

19 Q. Would you agree that Trileptal and other drugs might be a  
20 perfectly adequate substitute for lithium?

21 A. Sure. I mean, I'm certainly not advocating that lithium  
22 is the only approach to Mr. Mahoney. In fact, that would be  
23 outside my role to even decide what to put him on. I just feel  
24 like, my opinion is that clearly his symptoms are not being  
25 adequately controlled by the current medications.

1 Q. And Mr. Mahoney has expressed an interest in trying other  
2 medications that might actually work?

3 A. I believe he has, yes.

4 Q. He certainly hasn't refused that?

5 A. What his treatment provider's opinion is is that lithium  
6 would be the treatment of choice, and he has not -- he has  
7 refused that.

8 Q. And as a fallback, when someone has side effects from  
9 something like lithium, doesn't it make sense to try some of  
10 the other available alternatives?

11 A. Yes.

12 Q. Now, we were talking about the fact that most Americans  
13 live with bipolar without hospitalization.

14 A. Well, many people with Bipolar I disorder are hospitalized  
15 at some point in time or another. They're not necessarily  
16 institutionalized, but hospitalization is not uncommon in  
17 bipolar disorder.

18 Q. And for the vast majority of their lives, they live  
19 outside of an institution or hospital?

20 A. With treatment compliance, yes, that's true.

21 Q. Now, most persons with bipolar disorder are not psychotic?

22 A. That's true, yes.

23 Q. Most of them don't have command hallucinations?

24 A. That's correct.

25 Q. And most of them are not necessarily violent?

1 A. That's correct.

2 Q. Now, you reported a number of symptoms with respect to  
3 bipolar disorder that you identified Mr. Mahoney as suffering  
4 from.

5 A. Yes.

6 Q. And one of them includes loud, pressured speech?

7 A. Yes.

8 Q. And many people with bipolar disorder have it?

9 A. Yes.

10 Q. Now, you're also aware that Mr. Mahoney had a problem with  
11 his left eardrum when a firecracker went off when he was  
12 thirteen?

13 A. Yes.

14 Q. And that's made him hard of hearing?

15 A. Yes.

16 Q. Often people who are hard of hearing are also excessively  
17 loud?

18 A. Loud but not pressured, yes.

19 Q. Loud?

20 A. Yes.

21 Q. And part of the way that Mr. Mahoney manifests this loud,  
22 pressured speech is, he often blurts out things without  
23 censoring his thoughts; is that fair to say?

24 A. I don't know if -- if he has any intention of censoring  
25 his thoughts or not. I know he says many things which are

1 inappropriate. Whether he cares enough about it to censor his  
2 thoughts or not, I couldn't say.

3 Q. Most people have those kinds of inhibitions about saying  
4 things that are inappropriate?

5 A. Yes.

6 Q. And Mr. Mahoney tends to blurt out a lot of things?

7 A. I guess I'm not comfortable that he blurts out things. I  
8 believe he does things -- it's a symptom of his illness that he  
9 has very little impulse control and will say and do things  
10 which are not only detrimental to others but to himself.

11 Q. But he often says a lot of things that he doesn't  
12 necessarily act out on?

13 A. Again, I mean, he has said things that he doesn't act out  
14 on. I don't know that he doesn't always not act out on those  
15 things, but he certainly has made threats, for example, to kill  
16 people and things like that, and he has never done that.

17 Q. And he's made threats to stab people, right?

18 A. Yes.

19 Q. Has he ever stabbed anyone?

20 A. Not that I'm aware of.

21 Q. Now, you mentioned one of the other symptoms was  
22 grandiosity?

23 A. Correct.

24 Q. And I think in your report you refer to the fact that  
25 sometimes he refers to himself as a brilliant lawyer, a smart

1 lawyer?

2 A. Yes.

3 Q. But when you sit down with him, you know that he's aware  
4 that he doesn't have a Bar card?

5 A. He knows he doesn't have a Bar card, yes.

6 Q. And he knows that he's not really a lawyer?

7 A. Yes, he knows he's not really a lawyer.

8 Q. So, I mean, he sometimes is exuberant and overconfident  
9 about his ability. That comes with the territory, right?

10 A. I don't believe he's delusional about, you know, his role.  
11 I believe he does believe that he knows more than most  
12 attorneys do and that he's better able to do the job of an  
13 attorney than most of the attorneys that he's worked with, but  
14 he knows that he in fact himself is not an attorney.

15 Q. Well, he knows quite a bit about the law?

16 A. Well, I suppose that's a matter of opinion about how much  
17 he knows about the law.

18 Q. He spends a lot of time in the law library?

19 A. Yes, he does.

20 Q. He spends a lot of time researching cases?

21 A. Yes, he does.

22 Q. You're aware that he took a 15-week legal preparatory  
23 course at Suffolk?

24 A. Yes.

25 Q. And he's actually quite bright?

1 A. Yes, he is.

2 Q. Yes. In fact, he also attended and is just some  
3 undetermined number of credits shy of an associate's degree at  
4 Wentworth Institute?

5 A. That's what he's reported. I've never seen any actual  
6 documentation about it, but, yes, that's his report.

7 Q. Did you ever make any efforts to obtain such documentation?

8 A. No.

9 Q. Now, you mention in your report, and you referred to it  
10 this morning, that Mr. Mahoney can persevereate on certain  
11 things?

12 A. Yes.

13 Q. And the word "perseverate" in psychological idiom means  
14 what?

15 A. It would mean that he becomes fixated on certain topics  
16 and has great difficulty or almost no ability to move on to  
17 other topics, to resolve a situation and move on to something  
18 else, or to recognize that that issue is resolved or no longer  
19 something that they have any control over and then to focus on  
20 something else.

21 Q. And there are a number of particular issues that I'm just  
22 going to try to go through very quickly that you believe that  
23 you've seen evidence that Mr. Mahoney perseverates on?

24 A. Yes.

25 Q. So are you aware that he perseverates on the fact that his

1 photograph was posted on a New Hampshire sexual offender  
2 registration website for all the public to see all around the  
3 world that said that he had committed aggravated, felonious  
4 sexual assault?

5 A. That's his report. I've never actually seen that post. I  
6 don't know if it actually existed or not, but that's what he's  
7 reported to me.

8 Q. He's never shown you that document?

9 A. No.

10 Q. But you're aware that the only sexual offense in his  
11 entire history was a 1983 assault with intent to rape charge?

12 A. Yes.

13 Q. So it's not true that he committed an aggravated sexual  
14 assault; is that fair to say?

15 A. I don't know if he committed one or not. I know he wasn't  
16 convicted of one.

17 Q. Well, for legal purposes, whether he's convicted of one is  
18 what counts here, right?

19 A. The question was whether or not he had committed one. I'm  
20 simply saying that I'm not aware of any convictions with regard  
21 to that.

22 Q. So on occasion Mr. Mahoney has complained about being  
23 labeled a sexually violent predator in at least one, if not  
24 more, U.S. Marshal Service reports. Are you aware of that?

25 A. No. That I'm not aware of.

1 MR. SCHNEIDER: May I approach the witness, your  
2 Honor?

3 THE COURT: Has anyone ever found the underlying  
4 documents for that 1983 conviction? Have you?

5 MR. CALLAHAN: There's some evidence that exists, your  
6 Honor, but it's very challenging to find. We've been --

7 MR. SCHNEIDER: I found us a copy of the indictment,  
8 your Honor.

9 THE COURT: Is it one of these barebones "tracks the  
10 statute" kind of things?

11 MR. SCHNEIDER: I think pretty much so, although off  
12 the record, for the purpose of this, I guess what I would say  
13 is that it does make clear it was an assault with intent rape,  
14 and it was not an attempted rape, or which the U.S. Pretrial  
15 Services report indicates that it was a rape attempted, and  
16 it's not that. It's an assault/intent to rape, unconsummated,  
17 a threat, someone that he just had known previously and  
18 eventually ended, and that was it.

19 THE COURT: But we don't know what happened other than  
20 that he pled guilty to whatever those elements are?

21 MR. CALLAHAN: There was a jury trial, your Honor.

22 THE COURT: Oh, it was a jury trial.

23 MR. SCHNEIDER: It was a jury trial, yes.

24 THE COURT: And we can't get the transcript of that?  
25 The transcript doesn't exist? Was there an appeal?

1 MR. CALLAHAN: I don't know the answer to that, your  
2 Honor.

3 Q. So looking at that document that I just showed you, that's  
4 a U.S. Marshal's Form 129?

5 A. Yes.

6 Q. That's an Individual Custody Detention Report?

7 A. Yes.

8 Q. And if you go down to "Special cautions and medical  
9 remarks," about two-thirds of the way down the page, it does in  
10 fact say that Mr. Mahoney is a sexually violent predator?

11 A. That's what it says, yes.

12 Q. But, to your knowledge, and with your expertise, it's fair  
13 to say that one 1983 assault with intent to rape does not make  
14 a person a sexually violent predator?

15 A. He's never been civilly committed as a sexually violent  
16 predator, and I didn't do an evaluation to determine whether or  
17 not he was a sexually violent predator.

18 Q. And you have no basis for even coming close to that  
19 conclusion that he's a sexually violent predator?

20 A. I wouldn't agree that there's no basis.

21 Q. What's the basis?

22 A. I don't have an opinion.

23 Q. What's the basis?

24 A. He has a violent sexual offense on his record.

25 Q. And what year was that?

1 A. 1983.

2 Q. And that was when he was 24 years old?

3 A. Yes.

4 Q. And he's now 55?

5 A. That's correct.

6 Q. And he hasn't had a single sexual reoffense since then?

7 A. That's correct.

8 Q. So have you done 4248 sexual offense evaluations?

9 A. Yes, I have.

10 Q. Would a single offense over 30 years ago typically trigger  
11 an evaluation for being a violent sexual predator?

12 A. It may trigger an evaluation. It would rarely result in a  
13 civil commitment.

14 Q. So that's something that Mr. Mahoney has expressed his  
15 concerns about, are you aware of that, the fact that he's been  
16 labeled as a sexual offender or a violent predator?

17 A. This is the first I have -- you know, he's made many  
18 statements to me about the assault to rape charge over the  
19 years. This is the first time I recall seeing or hearing about  
20 the sexually violent predator statement.

21 Q. Now, another thing that has disturbed Mr. Mahoney is an  
22 item in the February 4, 2011 Pretrial Service Report, which  
23 indicated that when he was first arrested on the New Hampshire  
24 District Court charge, that a Taser was used against him?

25 A. Correct.

1 Q. And you're aware from speaking with him, at least, that he  
2 has reported that he didn't resist that arrest and that a Taser  
3 was never in fact fired at him?

4 A. Yes.

5 Q. And you've never seen any evidence to suggest that it has  
6 been?

7 A. No. I haven't seen anything other than that statement  
8 with regard to that.

9 Q. Now, Mr. Mahoney has also expressed concerns about the  
10 fact that he is required to register as a sexual offender, a  
11 sex offender?

12 A. Yes.

13 Q. And you're aware that, again, the 1983 case was the only  
14 sex offense on his entire record?

15 A. It's the only conviction, yes.

16 Q. And the only other one was something of which he was  
17 acquitted?

18 A. Correct.

19 Q. By a jury?

20 A. Yes.

21 Q. That the first Megan's Law in the country was 1993, ten  
22 years after that, you're aware of that, requiring registration?  
23 And that the federal law nicknamed SORNA wasn't enacted until  
24 2006?

25 MR. CALLAHAN: Your Honor, I would object. It's just

1 beyond the scope. He's not here to talk about the Sex Offender  
2 Registry or when the laws were enacted.

3 THE COURT: Yes, sustained.

4 Q. So there are a number of things that Mr. Mahoney  
5 perseverates about that you can see might actually be the basis  
6 for someone being concerned that they've been falsely accused  
7 of something that's not quite true?

8 A. I would state that being concerned and perseverating are  
9 separate issues, but, yes, obviously those are issues that  
10 someone should be concerned about.

11 Q. Now, you mentioned this morning that there were a number  
12 of -- and it's in your report -- a number of Bureau of Prisons  
13 house of correction incident reports?

14 A. Yes.

15 Q. And some of them involved some incredibly minor things?

16 A. The ones that I discussed this morning -- I suppose I  
17 would ask if you could be more specific.

18 Q. You're aware that there are some reports for things like  
19 theft of food trays?

20 A. Yes.

21 Q. He wanted an extra food tray one day?

22 A. Right, yes.

23 Q. That there's insolence and insubordination to officers and  
24 nurses?

25 A. Insolence can be a minor thing, or it can be a more

1 significant issue, so, you know, I don't know that I would  
2 characterize that as a terribly minor issue.

3 Q. But, of course, all of these things that occurred were  
4 things that occurred in prison settings?

5 A. It occurred in a correctional setting. Those weren't  
6 prisons. Those were pretrial detainee facilities.

7 Q. And in some cases, some of these incidents occurred where  
8 sentenced inmates and detainees are actually housed together?

9 A. Correct.

10 Q. Now, you also testified to a couple of incidents, March 5,  
11 2012, August 8, 2012, that involved some very aggressive  
12 language or what were taken to be and found to be threats?

13 A. I'm just looking at what those were.

14 (Witness examining document.)

15 A. Correct, yes. In March, 2012, he threatened to "beat the  
16 shit out of a correctional officer," quote/unquote. And what  
17 was the other date?

18 Q. August 8, 2012, the TV channel incident.

19 A. Yes. That was a situation with the another inmate over  
20 the TV.

21 Q. And in those two instances, there were threats made or  
22 there were statements made, but nothing ever came of it, no  
23 physical violence?

24 A. There was no physical violence in relation to those  
25 specific threats, no.

1 Q. Now, you did testify also about a couple of specific  
2 physical confrontations this morning?

3 A. Yes.

4 Q. The March 3, 2012 incident in Cheshire?

5 A. Correct.

6 Q. In which there were some blows exchanged with a couple of  
7 inmates?

8 A. I don't believe there were blows exchanged. I think  
9 Mr. Mahoney -- the way I read the incident was, he struck both  
10 of those individuals unprovoked, and there was no retaliation  
11 on their part.

12 Q. Well, doesn't the report in fact say that --

13 THE COURT: Which tab are we at now?

14 MR. SCHNEIDER: So the problem is that I have it --

15 MR. CALLAHAN: Tab 5. Your Honor, if I may, could I  
16 give the witness the binder?

17 THE COURT: Yes.

18 MR. SCHNEIDER: I just got the exhibit binder with  
19 numbers this morning, so I'm operating off a different --

20 THE COURT: Can I ask you this, Mr. Schneider: How  
21 long do you think you're going to be in your totality?

22 MR. SCHNEIDER: I am really bad at estimating  
23 cross-examination, but I would think another hour and a half,  
24 maybe two. An hour and a half, an hour.

25 THE COURT: I'm just simply saying, we have, which is

1 fine, take whatever you need, but I'm wondering whether -- it's  
2 up to you. I just don't think we're going to get to your  
3 doctor today.

4 MR. SCHNEIDER: Right, yes, I think that's right.

5 THE COURT: Because those hearings in between --

6 MR. SCHNEIDER: Yes.

7 THE COURT: If he's allocated the day anyway, that's  
8 fine, and you want him to sit here. I know I'm paying for it.  
9 So there it is, but I don't know if he -- he could probably  
10 leave. We're probably not going to get to him.

11 MR. SCHNEIDER: I guess since -- I mean, I did want  
12 him to hear the testimony, but he's heard the direct, so maybe  
13 if he does have any other matters, I'll leave it to  
14 Dr. Kriegman.

15 DR. KRIEGMAN: When do you want me to come back?

16 THE COURT: Well, that's going to be a big issue.  
17 Possibly tomorrow. No?

18 THE WITNESS: I have two civil commitment proceedings  
19 in the morning that I can't reschedule.

20 (Discussion between the Court and Clerk.)

21 THE COURT: Monday morning?

22 MR. SCHNEIDER: I'm going to be in Baltimore this  
23 weekend, and --

24 THE COURT: Then I don't know. I'd have to flag it  
25 through. I'm busy for the rest of the week.

1 MR. SCHNEIDER: Monday morning is a possibility.

2 THE WITNESS: I'm not available.

3 THE COURT: No, you'll be done. I'm not worried about  
4 you. You're being finished today.

5 (Discussion between the Court and Clerk.)

6 THE COURT: We have a Rule 11 at 10:30 which will not  
7 be very long. We could do it tomorrow morning, since he'll be  
8 done. Alternatively, we could probably do it Monday morning.

9 DR. KRIEGMAN: Tomorrow is better for me.

10 MR. SCHNEIDER: You want to do it tomorrow?

11 THE COURT: Well, or we can get back.

12 (Discussion off the record between attorneys.)

13 MR. SCHNEIDER: I think the Monday would be better. I  
14 actually booked up about five, six phone calls of cases I've  
15 been leaving to the side for this.

16 THE COURT: Well, are you available Monday morning,  
17 Dr. Kriegman?

18 DR. KRIEGMAN: I'm supposed to baby-sit for my  
19 grandchildren.

20 THE COURT: Bring them. How about -- let me just --  
21 or you can try and move this along, and we could at least get  
22 through his direct. I don't see any way of finishing him  
23 anyway, but it's a question of how much time --

24 MR. SCHNEIDER: I think I'd rather put it off  
25 altogether because I'm probably going to have some redirect as

1 well.

2 THE COURT: Redirect? Oh, of him.

3 MR. SCHNEIDER: Of Dr. Kriegman. I don't know if  
4 there will be any recross of Dr. Channell.

5 THE COURT: All right, can I see you all at sidebar.  
6 You can stand and stretch for a minute because we do have to  
7 figure out this scheduling thing.

8 SIDEBAR CONFERENCE:

9 THE COURT: We could do it the 9th.

10 THE CLERK: In the morning. I could move it.

11 THE COURT: Possibly even in the afternoon, right?

12 THE CLERK: What time are you leaving? Your flight  
13 isn't until the 6th.

14 THE COURT: I'm here all day on the 9th.

15 MR. CALLAHAN: I could do that, your Honor.

16 THE COURT: Listen, I could possibly -- here's the  
17 issue, okay? I could possibly do it on Thursday.

18 THE CLERK: Tomorrow.

19 THE COURT: I could move things around. I can do it  
20 on Monday. I can move things around. After that, I'm in D.C.  
21 for most of the following week.

22 MR. SCHNEIDER: I think my preference would be Monday.

23 THE COURT: Can your doctor do it?

24 MR. SCHNEIDER: Yes.

25 THE COURT: And you can do it?

1 MR. CALLAHAN: I can do it, yes.

2 THE COURT: And the reason I wanted to come up here at  
3 sidebar is because if we don't finish, one thing that worried  
4 me, it took me aback, I don't remember who moved for a  
5 continuance of that hearing, but if he went into suicide watch  
6 because of that --

7 THE CLERK: Tim moved it. I remember, I remember.  
8 But it was way back. It was when we first got the case. The  
9 case was first brought, I remember it, and we appointed it  
10 right away, and then it was an issue. Anyway --

11 MR. CALLAHAN: There was an issue with his  
12 satisfaction with Mr. Watkins.

13 MR. SCHNEIDER: Yes, the concern about the continuance  
14 and Tim Watkins was a very different thing. He just thought  
15 that -- I think my client believed that Tim had moved a court  
16 date so that his family couldn't be here.

17 THE COURT: I see, so this is --

18 MR. SCHNEIDER: So he's perfectly on board with  
19 Monday.

20 THE COURT: Let me just put one slight warning out  
21 there. So I'm Chief Judge of this Court, and we have a  
22 brand-new judge in Springfield who was confirmed today. I  
23 think the swearing-in is going to be somewhere in here.  
24 There's an off chance it could be here. So I'll just have to  
25 let you know.

1 MR. SCHNEIDER: Okay, okay.

2 THE COURT: Because I have to drive out to  
3 Springfield. That's not a quicky. That's -- okay? So I'm  
4 just putting it right there, so I'm trying to juggle all this,  
5 and I'm in D.C.

6 MR. SCHNEIDER: What time would --

7 THE COURT: So I'd like to do it and just try and give  
8 you most of the day on the 9th, and we will play around with  
9 some of these other things going on. Okay?

10 MR. SCHNEIDER: Could I just maybe ask that we  
11 start -- would it work for your Honor to start at 10:00? I'm  
12 just going to be spending the weekend doing crazy traveling.

13 THE COURT: Well, let me just put it this way: That's  
14 okay with me. You're in control. I just got a little unnerved  
15 when I heard that he went into a tailspin.

16 MR. SCHNEIDER: No, that was a very specific incident,  
17 not something --

18 THE COURT: All right, so we'll shoot for ten o'clock.

19 THE CLERK: Ten on Monday?

20 MR. CALLAHAN: Thank you, your Honor.

21 (End of sidebar conference.)

22 THE COURT: Dr. Kriegman, good-bye. See you Monday  
23 morning. Bring the kids.

24 Don't worry, you don't have to come back on the 9th.  
25 We're finishing you today. That part I will make sure happens.

1 BY MR. SCHNEIDER:

2 Q. So, again, you had testified this morning about a couple  
3 of physical confrontations while Mr. Mahoney was in the Bureau  
4 of Prisons or in Cheshire?

5 A. That's correct, yes.

6 Q. You testified about the March 3, 2012 incident?

7 A. Yes.

8 Q. And you also testified about the January 20, 2013  
9 incident?

10 A. Yes.

11 Q. Right? The first one was the one where he supposedly hit  
12 one or two inmates, and you just testified that there was no  
13 retaliation?

14 A. Well, that was incorrect. He assaulted one inmate without  
15 retaliation, and the other inmate did retaliate.

16 Q. The other inmate hit him over the head with a chair?

17 A. He threw a chair at him and struck him.

18 THE COURT: He hit one without --

19 THE WITNESS: Without provocation, yes.

20 THE COURT: I see. And then the other one retaliated?

21 THE WITNESS: Correct.

22 Q. And how do you know it was without provocation?

23 A. There was nothing in the incident report to indicate that  
24 the -- the other individual was simply standing there at the  
25 pill line, and Mr. Mahoney was upset with the nurse, and the

1 other individual had nothing to do with his interaction with  
2 the nurse, based on the incident report.

3 Q. Are you aware from your medication charts and everything  
4 else that that was the period where Mr. Mahoney was just being  
5 put back onto Klonopin?

6 A. Yes, I am aware of that.

7 Q. And this confrontation started over a verbal discussion  
8 with the nurse who was giving Mr. Mahoney his meds?

9 A. Correct.

10 Q. And you were aware that these other inmates kind of  
11 intervened in that conversation and said, "Just listen to the  
12 nurse"? Are you aware of that?

13 A. No, I'm not aware of that.

14 Q. Have you ever talked about what actually occurred with  
15 Mr. Mahoney?

16 A. I've talked with Mr. Mahoney about it, yes.

17 Q. So you're aware that he was outnumbered in this situation  
18 two to one by these other guys?

19 A. I'm aware of what Mr. Mahoney has described as being the  
20 actual incident. I don't know if that's actually the case or  
21 not.

22 Q. And he's described one of them as being a big guy?

23 A. He never made that specific statement to me.

24 Q. Well, did he ever tell you that Mr. Crivera was  
25 six-foot-three?

1 A. No.

2 Q. And were you aware that these two guys, after intervening  
3 in this discussion with the nurse, called him a sexual offender?

4 A. No.

5 Q. Now, no one was hospitalized as a result of that incident,  
6 right?

7 A. Not that I'm aware of.

8 Q. Now, you also referred to the January 20, 2013 incident in  
9 the dish service area at Devens?

10 A. Yes.

11 Q. And you've spoken to Mr. Mahoney about that incident?

12 A. Yes.

13 Q. And you're aware that Mr. Mahoney reported that the other  
14 inmate, Mr. Dunston, before they engaged in a verbal  
15 altercation, bumped him and was getting bossy and telling him  
16 stuff to do?

17 A. I don't recall that specifically. I'm not stating that he  
18 didn't tell me that, but I don't recall that information.

19 Q. Now, at the time of the January 20, 2013 incident, you're  
20 aware that that was reported to have been early in the morning?

21 A. I don't recall the time of day.

22 Q. So it's Government Exhibit 9. So the interview occurred  
23 with respect to that incident at 10:00 a.m.?

24 A. Where are you referring to?

25 Q. Bates No. 126.

1 (Witness examining document.)

2 A. Yes. That was a different day than the incident.

3 Q. No, I'm sorry. It's Bates No. 00126, not January 26.

4 A. No, I understand. The interview was --

5 Q. Oh, it was a subsequent date, yes, that's right. If you  
6 look at Bates No. 00125 at the top, and it says that on  
7 January 20, 2013, at approximately 6:45 a.m., the incident  
8 starts to unfold.

9 (Witness examining document.)

10 A. That was when he reported it, so it would have occurred at  
11 some point prior to that.

12 Q. Okay. And you're aware that with the medication regime  
13 that Mr. Mahoney is on, that he's very groggy and just a little  
14 disoriented in the morning when he wakes up?

15 A. I'm not aware of that, no.

16 Q. Well, his prescription for Seroquel is -- I forgot what  
17 the amount is, but it's HS, which means at bedtime?

18 A. Yes. Seroquel causes sedation. It would be rare to take  
19 it at anytime other than bedtime.

20 Q. I see. So sometimes people who are taking Seroquel are a  
21 little woozy in the morning when they wake up?

22 A. I suppose so, yes.

23 Q. Now, with respect to the Dunston incident, are you aware  
24 that Mr. Mahoney has reported that immediately after the  
25 incident was over, he apologized to Inmate Dunston?

1 A. I wasn't aware of that, no.

2 Q. Now, in addition to your main bipolar disorder diagnosis,  
3 you also diagnosed Mr. Mahoney as suffering from antisocial  
4 personality disorder?

5 A. Yes.

6 Q. And you testified to some of the previous Axis II  
7 diagnoses of Drs. Kissin, Mart, and a doctor at Avis Goodwin?

8 A. Yes.

9 Q. And it's fair to say that your diagnosis of full-blown  
10 antisocial personality disorder was the first diagnosis that  
11 you're aware of for that disorder?

12 A. Yes, the actual disorder, that's correct.

13 Q. And was the first time that you put that diagnosis of  
14 full-blown antisocial personality disorder down in one of your  
15 reports in 2013?

16 A. I don't recall exactly when I listed that diagnosis, if it  
17 was at the time of the competency evaluation or the 46  
18 evaluation.

19 Q. But you're aware that the 4246 evaluation, something like  
20 a diagnosis of antisocial personality disorder is something  
21 that might encourage a court to find someone dangerous?

22 A. No. Typically personality disorders are not a sufficient  
23 basis for civil commitment. An individual would have to be  
24 suffering from a major mental illness as opposed to a  
25 personality disorder. So, no, I'm not aware of that.

1 Q. And related to that, in a case like this, really, the  
2 Court has to find that Mr. Mahoney's bipolar disorder is linked  
3 causally to the substantial risk of causing bodily injury to  
4 another or serious damage to property; is that fair to say?

5 A. Yes.

6 Q. It's not the personality disorder; it's the Axis I  
7 disorder?

8 A. Correct.

9 Q. That's bipolar disorder. Now, with respect to your  
10 antisocial personality disorder diagnosis, the DSM-IV-TR, which  
11 is the text revised version of the DSM-IV, that's what you were  
12 using when you made that diagnosis?

13 A. I believe so. During the first report, yes.

14 Q. Well, if it says it in all of your 2013 reports that  
15 that's what you were using, I assume that's what you were  
16 using, right?

17 A. Yes.

18 Q. And the DSM-V only came out and only became effective this  
19 January?

20 A. Uhm, no. It was out before this January.

21 Q. Do you remember when it was officially published?

22 A. No. I would have to look.

23 Q. And I take it you haven't gone over any of your previous  
24 diagnoses under the older versions, DSM-IV --

25 A. There's been no substantial change with regard to

1 antisocial personality disorder.

2 Q. Can you just state for the record what the significant  
3 changes are in bipolar disorder from DSM-IV-TR to DSM-V.

4 A. Well, the issue with regard to bipolar disorder, I'm not  
5 aware of any significant changes with regard to the diagnostic  
6 criteria for bipolar disorder based on DSM-V.

7 Q. So it's your testimony that there are no changes in the  
8 required criteria for making the diagnosis?

9 A. It's not my testimony that there are no changes. I'm  
10 saying I can't recall there being significant changes.

11 Q. And you haven't made a new diagnosis under DSM-V?

12 A. No.

13 Q. Now, in making the antisocial personality disorder  
14 diagnosis, one of the things that's required, it's absolutely  
15 required, is that there be conduct disorder before the age of  
16 fifteen?

17 A. No, that's not correct.

18 Q. So your testimony is that conduct disorder is not one of  
19 the required features of antisocial personality disorder?

20 A. Yes, it is. What's required is evidence of conduct  
21 disorder, not that the individual meet actual diagnostic  
22 criteria for conduct disorder.

23 Q. So it's possible to diagnose someone as having full-blown  
24 antisocial personality disorder without having full-blown  
25 conduct disorder before the age of fifteen?

1 A. Yes, it's possible.

2 Q. That's your testimony?

3 A. Yes, it is.

4 Q. But, now, you're aware that Mr. Mahoney has absolutely no  
5 juvenile record?

6 A. Yes, I am.

7 Q. Now, you rely heavily in your report and in your testimony  
8 on Mr. Mahoney's criminal record?

9 A. His criminal record is one piece of information I relied  
10 on with regard to my opinion, yes.

11 Q. And you point out in your report that from your standpoint,  
12 he has a history, a lengthy history of criminal violence?

13 A. Yes.

14 Q. Now, you rely specifically in the History of Criminal  
15 Violence section of your report on eleven convictions, and  
16 you're welcome to go through your report if you want to check  
17 that out.

18 A. No. I believe that's accurate.

19 Q. Now, in your report of May 9, 2013, you stated that  
20 Mr. Mahoney has a history of weapons-related offenses,  
21 including armed robbery, assault, and two firearms offenses.

22 A. Could you tell me what you want me to take a look at.

23 Q. Sure. Look at Bates No. 01689.

24 MR. CALLAHAN: Just for the record, you're talking  
25 about a report that I don't believe is before Dr. Channell.

1 MR. SCHNEIDER: The May 9, 2013 report is not before  
2 Dr. Channell?

3 MR. CALLAHAN: Unless you've given it to him. You're  
4 talking about the May 30, 2013?

5 MR. SCHNEIDER: Well, Dr. Channell has already  
6 testified that there is no difference between the May 9 report  
7 and the May 30 report.

8 A. That report doesn't have any Bates numbers in this. What  
9 page of the report are you --

10 Q. Well, look at -- I'm sorry, but there's no Bates numbers  
11 on the government's exhibit that's been submitted, but if you  
12 look at Page 18 of 18, the third full paragraph down, it says,  
13 does it not, "As such, Mr. Mahoney also has a history of  
14 weapon-related offenses, including armed robbery, multiple  
15 counts of both assault with a dangerous weapon, assault and  
16 battery with a dangerous weapon, criminal possession of loaded  
17 firearms, third degree, and criminal possession of stolen  
18 firearms"?

19 A. Yes.

20 Q. But you're aware that in fact Mr. Mahoney does not have  
21 any firearms offenses listed on the Modified Pretrial Service  
22 Report of February 4, 2011?

23 A. I'd have to review the report.

24 Q. I would ask you to do that.

25 THE COURT: Do we have it?

1 MR. SCHNEIDER: Is that listed in your --

2 May I approach the witness, your Honor?

3 THE COURT: Yes. I'd also like to see his criminal  
4 history if we have a copy of it. Great, I think we should mark  
5 this as an exhibit. This is the Pretrial Services history.  
6 What's the next number?

7 THE CLERK: 22, 22. I'll put a sticker on it.

8 (Discussion off the record.)

9 THE COURT: I'm putting it in because it was hard for  
10 me to figure out from the various reports what was a  
11 conviction, what wasn't. I think this is a Pretrial  
12 Services -- I'll go with this over what else I've got in terms  
13 of what the convictions are.

14 THE CLERK: It's 22.

15 THE COURT: Okay.

16 (Exhibit 22 received in evidence.)

17 THE COURT: Okay, this is out of New Hampshire as of  
18 February 4, 2011.

19 Q. And you've had an opportunity to go through the record?

20 A. Yes, I did.

21 Q. Do you see one single firearms violation conviction there?

22 A. No, I don't.

23 Q. So when you said that he has a number of weapons-related  
24 offenses, including armed robbery and criminal possession of  
25 loaded firearms, third degree, and criminal possession of

1 stolen firearms, that's not true, right?

2 A. Based on that Pretrial Services report, that is not true.

3 Q. Well, based on your testimony about the documents that you  
4 read, this was the only document that actually encapsulated  
5 Mr. Mahoney's criminal history that you read?

6 A. That's correct.

7 Q. And you also mention in your May 30 report that  
8 Mr. Mahoney also had armed robbery offenses on his record,  
9 right? That's also at Page 18, same paragraph.

10 A. Yes.

11 Q. And I ask you to go through, if you need to, this report  
12 to see if there were any armed robbery convictions on  
13 Mr. Mahoney's record at all.

14 (Witness examining document.)

15 MR. CALLAHAN: Can I just object to this, your Honor,  
16 as mischaracterizing what the report says. He does list  
17 offenses, and he distinguishes where there are convictions  
18 within the report, but as to the --

19 THE COURT: Well, at least for purposes of my  
20 understanding it, when he says, "He also has a history of  
21 weapon-related offenses" on Page 18, so I'd like to know which  
22 ones are the convictions.

23 MR. CALLAHAN: Your Honor, if you go through -- is  
24 that a question to me, your Honor, or are you just asking  
25 Dr. Channell?

1           THE COURT: I don't care who, but when you go through  
2 it, which ones of those are convictions, not --

3           THE WITNESS: The weapons-related offenses that I'm  
4 aware of at this point in time that are convictions are a 1977  
5 offense for assault with a dangerous weapon, a knife.

6           THE COURT: 1977, I don't see that here in this  
7 criminal history, so --

8           THE WITNESS: This is based on the information that's  
9 included in Dr. Kriegman's report, which I'm not exactly sure  
10 where they obtained that information.

11           MR. SCHNEIDER: For what it's worth, your Honor, I'll  
12 clarify. I made a mistake and sent -- there's been a problem  
13 with the criminal records stuff. I had obtained some Mass.  
14 CORIs and sent them on to Dr. Kriegman. So it turns out that  
15 there are actually four Brian Mahoneys, two of whom I believe  
16 had the same date of birth. So I sent those two to Dr. Kriegman.  
17 Dr. Kriegman I think originally when he compiled the report  
18 based it on that, and then I subsequently sent him a copy of  
19 the Modified Pretrial Services Report, which appears to be  
20 somewhat more accurate, and it didn't contain that 1977  
21 document.

22           THE COURT: So just going through our court records,  
23 which for the moment I'm going to rely on, I'm looking at it,  
24 there's an assault with a dangerous weapon from Suffolk  
25 Superior, which is No. 4, right? And it looks like there was a

1 guilty.

2 MR. SCHNEIDER: And it says the dangerous weapon is  
3 pliers.

4 THE COURT: Right, but it's one that's a dangerous  
5 weapon, an assault with a dangerous weapon. And then the  
6 second one was the rape, the oral attempt issue.

7 MR. SCHNEIDER: Which was an assault with intent to  
8 rape, your Honor, if I may.

9 THE COURT: Assault with intent, right, but it says  
10 "Assault and battery with a dangerous weapon, to wit, a knife."  
11 That's the one I'm talking about, No. 9, so that's a second  
12 one. And then while there are disorderlies and resistings and  
13 assaults and batteries, those are the two that I'm seeing that  
14 are assaults with a weapon. Is that right?

15 THE WITNESS: Yes.

16 THE COURT: So I'm not seeing where all these firearms  
17 are coming from, since we've got knives and pliers. I'm not  
18 saying that's fabulous, but I'm just -- so were you relying on  
19 charges rather than convictions for those?

20 THE WITNESS: No, your Honor. At this point I'm not  
21 exactly sure where the firearm statements are related -- where  
22 they would have come from.

23 THE COURT: Now, assume for me that there are two  
24 assaults, one with a pliers, one with a knife, does that change  
25 your risk assessment?

1 THE WITNESS: No, it doesn't.

2 Q. So on here you have listed not just -- you refer to  
3 multiple counts of both assault with a dangerous weapon and  
4 assault and battery with a dangerous weapon, but, in addition,  
5 criminal possession of loaded firearms, third degree, and  
6 criminal possession of stolen firearms, and armed robbery. Do  
7 you still believe that he basically has a history of  
8 weapons-related offenses?

9 A. Yes, he does have a history of weapons-related offenses.

10 Q. Based on the fact that there were pliers allegedly  
11 involved in one very old assault?

12 A. Yes.

13 Q. And a knife that was not in fact ever utilized, didn't  
14 stab anyone, in the other incident?

15 MR. CALLAHAN: Objection, your Honor, to the extent  
16 he's representing what was used and how that was done.

17 THE COURT: Sustained.

18 Q. Well, you are talking about incidents that occurred over  
19 thirty years ago, correct?

20 A. Yes, but that is Mr. Mahoney's history.

21 Q. So it's his early history?

22 A. If that's how you'd like to characterize it, yes, it's his  
23 early history.

24 Q. Well, does the fact that an incident like that occurred  
25 over 30 years ago rather than five months ago, two months ago,

1 yesterday, make a difference in your risk assessment?

2 A. If you're asking if it changes my opinion, it does not. I  
3 mean, obviously I would be quite concerned if something like  
4 that happened yesterday, but the fact that those occurred  
5 thirty years ago does not change my opinion that he continues  
6 to pose a substantial risk of bodily injury to others.

7 Q. Now, this Modified Pretrial Services Report that we've  
8 been looking at lists 67 charges and only 35 sets of  
9 convictions?

10 A. I don't have those numbers. If that's the case, I  
11 wouldn't dispute it.

12 Q. I mean -- okay.

13 A. I haven't added them.

14 Q. If you look at the numbers before each of the convictions  
15 and you look at the last page with respect to the list of  
16 convictions, you'll see the number 35. Shall we go through  
17 that?

18 A. You're asking me if we should go through that?

19 Q. Well, it's fair to say that if number 35 on Page 01318 is  
20 the last set of convictions listed, it probably means that  
21 there were 35 convictions, correct?

22 A. I'm not disputing that. If that's the case, then that's  
23 the case.

24 Q. And if the number on Page 01320 adds up to including other  
25 arrests that didn't result in convictions and it said 55, it's

1 fair to say that there would have been 55 convictions and  
2 arrests?

3 A. (No response.)

4 Q. I'll move on. So of the 35 convictions, when you just  
5 quickly go through them, 35 were misdemeanor or district court  
6 convictions?

7 A. Again, I haven't added up how many misdemeanors or  
8 district court convictions he had. I focused on the violent  
9 offenses.

10 Q. And how many violent offenses have you identified?

11 A. I identified -- I can tell you the number of violent  
12 offenses I identified in his case: an assault and battery with  
13 a dangerous weapon for which he was convicted in 1983; an  
14 assault to rape, during which he used a knife in 1983; an  
15 assault and battery for which he was convicted in 1996; assault  
16 and battery for which he was convicted in 1997. Those would  
17 have been the physical offenses, and then there were also  
18 several threatening offenses or two threatening offenses. One  
19 threatening to kill in 1996 was a conviction; and threatening  
20 bodily harm in 2003, that was a conviction; and intimidating a  
21 witness in 1983, that was a conviction; and then in 2005,  
22 criminal threatening, which was a conviction.

23 Q. And, by the way, in none of these cases did you try to  
24 obtain the underlying police reports?

25 A. It wasn't that I didn't try to obtain them. I was never

1     able to obtain any further information. I had spoke to the  
2     attorneys on these cases, but we were never able to identify  
3     anything else that occurred other than what we had available.

4     Q.    So when you made the determination with respect to  
5     Mr. Mahoney's history of so-called criminal violence based on  
6     this report, you didn't go below the report by having in hand  
7     copies of any police reports?

8     A.    As I said, I attempted to do so, but I did not have those  
9     reports.

10    Q.    And you never obtained any of the indictments?

11    A.    I've never seen an indictment.

12    Q.    And you've never seen any of the applications for  
13    complaint?

14    A.    No.

15    Q.    And you've never seen any transcripts?

16    A.    No.

17    Q.    Now, of the 35 convictions listed on that document, 27 of  
18    them occurred before Mr. Mahoney turned age 45?

19           (Witness examining document.)

20    A.    Yes, that's correct.

21    Q.    And I take it that the literature suggests -- you're aware  
22    of the fact that the literature suggests that as people age,  
23    there tends to be a drop-off in recidivism?

24    A.    Yes, there is.

25    Q.    And Mr. Mahoney is now 55?

1 A. That's correct.

2 Q. Now, many, if not most, of the charges on Mr. Mahoney's  
3 record have little to do with violence, and let me give you  
4 some examples. They're possessions of Class D, shoplifting, a  
5 couple of criminal mischiefs, a disorderly, nine registration  
6 and license violation related convictions. Does that sound  
7 right?

8 A. Yes.

9 Q. By the way, in terms of the validity of the information on  
10 here, No. 6 indicates that Mr. Mahoney was convicted, possibly  
11 pled guilty, to straight possession of marijuana, Class D. Do  
12 you see that?

13 A. Yes.

14 Q. And it indicates that on January 16, 2008, he was  
15 sentenced to 20 months house of corrections, committed?

16 A. Yes.

17 Q. Do you have any idea whether that's even possible during  
18 that period of time to have received 20 months committed on  
19 straight possession of a Class D substance?

20 A. I don't have any -- I don't have an opinion one way or the  
21 other. I don't know.

22 Q. Now, just briefly in looking through this, if I said that  
23 of the committed sentences, ten or less involved -- ten  
24 involved less than commitments of 90 days?

25 A. I don't know. I don't recall exactly how long the

1 sentence was on the charges.

2 Q. But there clearly are a number of sentences that are small  
3 misdemeanor or district court sentences to houses of  
4 correction?

5 A. Yes.

6 Q. And in fact, over this entire 37-year period there's, only  
7 one state prison sentence?

8 A. I believe that's correct, yes.

9 Q. And that was the 1983 assault with intent to rape?

10 A. Correct.

11 Q. And Mr. Mahoney was 24 years old?

12 A. Correct.

13 Q. Over 30 years ago?

14 A. That's correct.

15 Q. So in his entire criminal history, obviously Mr. Mahoney  
16 has had a number of scrapes with the law?

17 A. Yes.

18 Q. But as far as you know, no one was hospitalized as a  
19 result of any of the altercations with Mr. Mahoney?

20 A. I don't know one way or the other whether they were or  
21 weren't.

22 Q. As far as you know, there was never any serious injury  
23 inflicted to any individual?

24 A. As far as I know. Again, I don't have any data on the  
25 outcome to the victim at all.

1 Q. And you have no reason to believe there was anything like  
2 stabbings or shootings or anything like that committed by  
3 Mr. Mahoney?

4 A. Not based on the criminal record. I didn't see anything  
5 like that.

6 Q. Now, you make some reference to this toward the end of  
7 your report, but I take it that in assessing whether there is a  
8 substantial risk of bodily injury to others or serious damage  
9 to properties of others, that it's difficult to make accurate  
10 predictions with respect to specific individuals?

11 A. Yes, it is.

12 Q. And that means that two people with a very similar profile  
13 could behave quite differently?

14 A. That's correct.

15 Q. One with Mr. Mahoney's profile might recidivate and one  
16 might not?

17 A. It's certainly a possibility.

18 Q. And you've acknowledged in your report that these kinds of  
19 dangerousness predictions are of limited accuracy?

20 A. Correct.

21 Q. And that the relevant factors cannot all be known in  
22 advance?

23 A. That's right.

24 Q. And people in your position, professional evaluators  
25 looking at the same individual might come up with two different

1 opinions with respect to the same individual?

2 A. Correct.

3 Q. And that's happened here?

4 A. Yes.

5 Q. Now, you testified about three instruments that you used  
6 in making your risk assessment?

7 A. Yes.

8 Q. The first one was the PCL-R, the Psychotherapy  
9 Checklist-Revised?

10 A. Correct.

11 Q. And you acknowledge that that is not specifically a risk  
12 assessment tool?

13 A. Yes.

14 Q. Its function is simply diagnostic?

15 A. Correct.

16 Q. To figure out whether someone fits within the criteria for  
17 someone who's deemed to suffer from psychopathic personality?

18 A. That's what the instrument was designed for, yes.

19 Q. And the instrument itself, as we've seen, is really quite  
20 a simple instrument?

21 A. Uhm, well, I imagine that the author would argue against  
22 the idea that it's a simple instrument. It does require a good  
23 deal of training in order to use it.

24 Q. This is the author Robert Hare?

25 A. Correct.

1 Q. And, by the way, these are commercially available  
2 instruments?

3 A. Correct.

4 Q. So he makes money off these things?

5 A. Yes.

6 Q. The instrument itself essentially has twenty questions on  
7 it?

8 A. That's correct.

9 Q. And it's a really pretty straightforward scoring system?

10 A. Well, like all of these instruments, it has a manual  
11 that's associated with it that helps direct how to score the  
12 items, correct.

13 Q. Sure, but either you get a zero for "no," a 1 for "maybe,"  
14 or a 2 for "yes"?

15 A. That's right.

16 Q. These aren't weighted?

17 A. What do you mean by "weighted"?

18 Q. So for each of the twenty items, there's no multiplier  
19 before each item; you simply add up the total score?

20 A. That's correct, yes.

21 Q. So you get a 2 on glibness and superficial charm and a 2  
22 on grandiose sense of self-worth, and that equals 4?

23 A. That's right.

24 Q. Now, when you do these PCL-Rs, you're the one who scores  
25 the subject, correct?

1 A. Typically, yes. Sometimes I'll do it with an intern who's  
2 in training, but generally I do it independently.

3 Q. And this basically calls for a certain amount of judgment  
4 on your part whether someone fits each of these twenty  
5 criteria?

6 A. That's correct, yes.

7 Q. Now, you decided that Mr. Mahoney scored two points for  
8 glibness, superficial charm?

9 A. Correct.

10 Q. Two points for pathological liar?

11 A. Yes.

12 Q. Two points for no remorse --

13 THE COURT: Can you give an example of him lying?

14 THE WITNESS: Well, as I testified this morning, his  
15 characterization of how certain incidents have transpired that  
16 is different than what the record would indicate; for example,  
17 threatening AUSA Huftalen, for example, or asking if he's ever  
18 threatened anybody and him telling me "no," he's never  
19 threatened anybody, which is clearly inconsistent with his  
20 record.

21 Q. So Mr. Mahoney was scored on the MMPI-2?

22 A. That's right.

23 Q. And that's the Minnesota Multiphasic Personality  
24 Inventory-2, correct?

25 A. Yes.

1 Q. And it's a whole bunch, hundreds of questions?

2 A. Yes. It's 567 questions.

3 Q. And one of the issues that people are scaled for are  
4 essentially their honesty or whether they're malingering in  
5 answering the questions?

6 A. It's -- well, first of all, I did not use the MMPI-2 as  
7 part of his risk assessment. That was done with regard to the  
8 competency evaluation. It doesn't measure lying. It does  
9 measure whether or not somebody is exaggerating their mental  
10 health symptoms, but it doesn't address lying in other areas.

11 Q. And in that context, there was no question that the MMPI-2  
12 results for Mr. Mahoney indicated that he was not exaggerating  
13 or not lying about his symptoms?

14 A. That's right.

15 Q. You scored Mr. Mahoney two points for glibness and  
16 superficial charm. That must be a subjective judgment. No?

17 A. That's based primarily on his glibness, being very  
18 verbally facile, basically that he will express knowledge in  
19 many areas and use technical terms and jargon when he -- in an  
20 effect to impress others. That's glibness. I would not argue  
21 that he has any superficial charm, but he does have a good deal  
22 of glibness.

23 Q. So are all lawyers glib?

24 A. Some lawyers are, yes.

25 Q. You put down two points for --

1 THE COURT: They all have superficial charm.

2 MR. SCHNEIDER: There we go.

3 Q. You also put down two points for criminal versatility?

4 A. That's correct.

5 Q. Now, at the time you scored this, did you believe that  
6 Mr. Mahoney had on his record of convictions armed robbery  
7 convictions and convictions for possession of firearms?

8 A. I imagine I did, as that's what's reflected in my report,  
9 yes.

10 Q. So when you come up with these scorings, it's quite  
11 possible another evaluator could score them differently than  
12 you did?

13 A. It is possible, yes. Although the instrument does have  
14 good inter-rater reliability, it's certainly possible that they  
15 could score them differently.

16 THE COURT: Let me just say this: I have two  
17 scheduling conferences at 2:30 and 2:45, and Mary Ellen has got  
18 all the lawyers lined up, so this might be a good -- let me  
19 know where a good place for a break is, either now or in a few  
20 minutes.

21 MR. SCHNEIDER: I'm happy to break here. That's fine.

22 THE COURT: Okay, so we'll take a break. I typically  
23 don't do these on the record, so Lee can take a break, and I  
24 can get the civil attorneys out of here. So why don't we take  
25 a midafternoon break, and then I'll be back.

1 MR. SCHNEIDER: What time should we be back?

2 THE COURT: Like in fifteen, twenty minutes.

3 (A recess was taken, 2:46 p.m.)

4 (Resumed, 3:08 p.m.)

5 THE COURT: So hopefully you'll finish in the next --  
6 there will be some redirect probably, right? What do you  
7 figure, an hour?

8 MR. SCHNEIDER: I'm hoping more like half an hour to  
9 40 minutes. Well, maybe an hour. I don't know.

10 THE COURT: But we are finishing today. I mean, I'm  
11 going to start putting the pressure on.

12 MR. SCHNEIDER: Yes, I understand. I am kind of  
13 getting through the instruments.

14 MR. CALLAHAN: And, your Honor, before the respondent  
15 comes in, we had talked about the binder, and with the  
16 exception of the letter --

17 THE COURT: You'd better not do this until he comes  
18 in.

19 MR. CALLAHAN: Okay, understood, understood.

20 (Respondent enters the courtroom.)

21 THE COURT: Okay, Mr. Schneider.

22 MR. SCHNEIDER: Your Honor, I did just want to make  
23 one thing clear because I had some discussions with the  
24 prosecutor. So my objections with respect to the exhibits are  
25 going to be focused on specifically that inmate letter, which I

1 think has no place being in the record, and -- is that the only  
2 one?

3 THE COURT: Right, and indeed my law clerk found a  
4 case which the First Circuit resolved that actually -- we'll  
5 get you the name of it, she's upstairs now -- that the Rules of  
6 Evidence don't apply. So we'll get you that. It can be  
7 briefed, but regardless of that issue, I do worry about the  
8 inherent reliability of somebody whom no one has spoken to, I  
9 don't know anything about. He could be a jailhouse snitch, or  
10 he could be telling truth. I don't know. But I'm not going to  
11 rely on it. If you want to bring him in, bring him in.

12 MR. CALLAHAN: Understood, your Honor. Thank you.

13 MR. SCHNEIDER: And for the record, I would just like  
14 to say, the inmate is someone who is serving a 15-year sentence  
15 for an armed career criminal, and the letters on their face  
16 basically say he was seeking substantial assistance. He was  
17 trying to cut a deal.

18 MR. CALLAHAN: That is not accurate.

19 THE COURT: Well, I made it a point not to read the  
20 letter once there was an objection.

21 MR. SCHNEIDER: Okay, okay.

22 THE COURT: I read so much of the letter as was  
23 included in the expert report. And it certainly stood out,  
24 that I'll give you, but I didn't go and read the letter once  
25 you objected, so --

1 MR. SCHNEIDER: Good.

2 THE COURT: If the government wants to introduce him,  
3 introduce him.

4 MR. SCHNEIDER: And the corollary is that I'm not  
5 objecting to the other items being introduced by the  
6 government. The last thing I think any of us need and  
7 Mr. Mahoney needs is a delay of many months of these  
8 proceedings just to get a keeper of records in to authenticate.  
9 That would be kind of silly.

10 THE COURT: Okay, all right.

11 MR. SCHNEIDER: Are we beginning?

12 BY MR. SCHNEIDER:

13 Q. So where we left off, Dr. Channell, was we were discussing  
14 your scoring of the PCL-R, and you ultimately concluded that  
15 Mr. Mahoney scored a 25 out of 40 on the instrument, right?

16 A. Yes.

17 Q. And that is five points below the cutoff score for  
18 psychopathic personality?

19 A. Yes.

20 Q. And so instead you decided that you would label him not  
21 suffering from psychopathic personality disorder or  
22 psychopathic personality but that you would instead  
23 characterize him as having psychopathic tendencies?

24 A. Correct.

25 Q. In none of the other psych evaluations done by Dr. Kissin

1 or Dr. Mart or anyone else at Avis Goodwin did they say he was  
2 suffering from psychopathic tendencies; is that fair to say?

3 A. That's correct.

4 Q. And you're aware that by putting that down, it makes him  
5 more likely to be found dangerous than not?

6 A. I put that down because that's my opinion. Whether or not  
7 it has anything to do with him being more dangerous or not  
8 would be up to the decision-maker.

9 Q. But you think it might have something to do with whether  
10 he's more likely to be found dangerous?

11 A. I believe it elevates his risk, yes. So I don't know how  
12 much it has to do with him being found dangerous, but it does  
13 contribute to my opinion that he would pose a danger.

14 Q. Now, you reached that conclusion even though you  
15 acknowledge that he doesn't have some of the critical  
16 characteristics of someone with full -- who is a psychopathic  
17 personality, correct?

18 A. Yes.

19 Q. So not sexually promiscuous?

20 A. Correct.

21 Q. No history of juvenile delinquency?

22 A. Correct.

23 Q. First offense in fact wasn't until age 19?

24 A. That's right.

25 Q. All right. And you indicate that he's also not conning or

1     manipulative?

2     A.     That's correct.

3     Q.     And in fact, being conning and manipulative is actually  
4     one of the features of someone suffering from psychopathic  
5     personality?

6     A.     It's one of twenty features of somebody who's suffering  
7     from psychopathic personality.

8     Q.     So, in your view, can someone be a psychopath if they're  
9     not conning or manipulative?

10    A.     Certainly.

11    Q.     They can be?

12    A.     Yes.

13    Q.     Okay. Now, it's also fair to say, though, that you've  
14    also -- elsewhere in your report you describe Mr. Mahoney's  
15    behavior as being impulsive and lacking in reflection and  
16    forethought?

17    A.     Yes.

18    Q.     So a lot of his conduct is impulsive?

19    A.     Yes.

20    Q.     Not premeditated?

21    A.     Correct.

22    Q.     Now, let's take a quick look at your testimony about the  
23    HCR-20. That's also a fairly -- that's Defense Exhibit 2, your  
24    Honor -- that's also a fairly straightforward single-page  
25    scoring sheet, right?

1 A. Yes.

2 Q. It's got twenty items on it?

3 A. Correct.

4 Q. It's also a checklist?

5 A. Correct.

6 Q. And it can be scored or you did score it using -- it uses  
7 a very similar -- you did score it, right?

8 A. Yes.

9 Q. And it uses a very similar scoring system to the PCL-R?

10 A. Yes, it is similar. Some items are different, but in  
11 general, yes, zero, 1, or 2.

12 Q. And it also, specifically in terms of just the numbers for  
13 the scoring, it's a zero for "no" or "absent," 1 for  
14 "partially" or "possibly present," and 2 for "yes" or  
15 "definitely present," right?

16 A. Correct.

17 Q. Now, according to the manual and according to your  
18 evaluations in this case, you're not really supposed to churn  
19 out or it's not designed to churn out a numerical estimate of  
20 risk?

21 A. It is designed to, as you say, churn out a score, but it  
22 does not churn out a numerical estimate of risk. That would be  
23 more consistent with an actuarial type of instrument like the  
24 VRAG, so, yes, that's correct.

25 Q. And ultimately this HCR-20 is what you would call -- what

1     you I believe did call a "structured clinical judgment"?

2     A.     That is correct, yes.

3     Q.     And it was your opinion on this that Mr. Mahoney was high  
4     risk?

5     A.     It was, yes.

6     Q.     Now, by the way, you've read, obviously, in preparing this  
7     the HCR-20 manual?

8     A.     Yes.

9     Q.     And you're aware that the manual says that it's extremely  
10    hard to predict future violent acts of mentally disordered  
11    persons?

12    A.     Yes.

13    Q.     And one reason for that, I take it, is that mental illness  
14    may not be strongly, clearly, and directly associated with  
15    violence?

16    A.     It may not, yes.

17    Q.     In fact, being mentally ill is not as good a predictor of  
18    violence as simply being young, male, and low socioeconomic  
19    status?

20    A.     Based on group data, that's true, yes.

21    Q.     And you're also aware that there is research that has  
22    failed to demonstrate strong positive links between structured  
23    criminal judgments and actual outcomes?

24    A.     There is research that has come to that conclusion.

25    There's also research that's come to a different conclusion,

1 but, yes, that is accurate.

2 Q. And, in your view, you view this instrument and others  
3 like it as being able to generate predictions better than  
4 chance?

5 A. I wouldn't say they generate predictions. These are --  
6 it's additional information to take into consideration with  
7 regard to arriving at an ultimate opinion on the issue of risk.  
8 There is research data that clearly demonstrates that  
9 predictive validity is better than chance, and I have no reason  
10 to disbelieve that there's a good deal of research in that  
11 area.

12 Q. Now, the third instrument that you used in this case is  
13 the Violence Risk Appraisal Guide, the VRAG?

14 A. Right.

15 Q. And you describe that as an actuarial instrument?

16 A. It is, yes.

17 Q. And really what an actuarial instrument is is really a  
18 mechanical instrument for grinding out an objective score?

19 A. Uhm, yeah, I think that's a fair characterization.

20 Q. And this particular instrument claims to predict the risk  
21 of violent recidivism within specific time frames?

22 A. Yes. Well, it doesn't necessarily claim to predict it for  
23 a particular individual, but it provides data from a sample  
24 that can be compared to a particular individual with a certain  
25 set of characteristics.

1 Q. And when you make that point, you're suggesting, I take  
2 it, that it can be dangerous to extrapolate from population  
3 statistics to predictions about what a specific individual will  
4 do?

5 A. Yes.

6 Q. And that's generally a problem with all these kinds of  
7 instruments?

8 A. That's correct.

9 Q. Now, in the case of the VRAG, there's actually an updated  
10 version of this instrument, correct?

11 A. There's a fairly recent update. It's not being widely  
12 used at this point. I think it's still in the research --

13 Q. I'm sorry. Are you aware that Quinsey, Harris, Rice and  
14 Cormier, the authors of the VRAG, have published an article  
15 indicating that they believe it's a more precise and accurate  
16 instrument?

17 A. That is true. Like any new instrument, most --

18 THE COURT: I've lost you. What's a more precise and  
19 accurate? Which one?

20 MR. SCHNEIDER: The VRAG-R, the revised VRAG, the new  
21 version.

22 A. There's a limited database available with regard to  
23 whether or not their assertion in that case is accurate or not,  
24 and often it's fairly common practice that evaluators will wait  
25 for the research to arrive to support the use of a new

1 instrument, but, yes, there is a newer instrument available.

2 Q. Now, was the VRAG filled out? Did you fill out the VRAG  
3 at the same time you filled out the HCR-20 and the PCL-R?

4 A. I know I filled it out at the same time as the HCR-20. I  
5 would have done both after the PCL-R because I use that  
6 instrument for these instruments, but I think they were all  
7 contemporaneously around the same time.

8 Q. So if the HCR coding sheet says it was filled out on  
9 April 7, 2013, it's likely that you would have filled out the  
10 VRAG also at that time?

11 A. Yes.

12 Q. So that's over 14 months ago or about 14 months ago?

13 A. As I indicated, the VRAG is a static instrument, so it  
14 really wouldn't have mattered when I did it. The data is  
15 unchangeable. It's historical data. But, yes, you're correct  
16 on the date.

17 Q. And in fact that's one of the criticisms of the VRAG, is  
18 that it only focuses on static factors?

19 A. Some researchers and evaluators criticize it for that  
20 reason, and other evaluators believe that's its strength.  
21 There's debate on that issue.

22 Q. So theoretically you could have filled this out and gotten  
23 these results ten years ago, and it would still be applicable  
24 today?

25 A. Well, I don't know if that's necessarily true because

1 things could have occurred between ten years ago and today  
2 which would have elevated the risk. The risk could never go  
3 down.

4 Q. So once someone is graded at high risk under the VRAG, is  
5 it your opinion that that person's risk of violent recidivism  
6 can never go down?

7 A. The only way it would decrease would be the age at the  
8 index offense; and as a person ages, that item would decrease  
9 because of the data, as you indicated earlier, that as  
10 individuals grow older, their risk decreases. So the score can  
11 go down based on that single item, but the other static items  
12 would remain the same.

13 Q. So you're aware that there's a literature about current  
14 clinical factors that are considered, at least with respect to  
15 the HCR and other structured clinical judgments?

16 A. Yes. That's why I used the HCR-20 in this case.

17 Q. And you're aware that there's a literature about  
18 protective factors?

19 A. Yes.

20 Q. The VRAG doesn't take account of protective factors, does  
21 it?

22 A. No, it doesn't.

23 Q. And is it your opinion that protective factors simply  
24 don't matter?

25 A. No, that's not my opinion.

1 Q. So an instrument that doesn't make any reference to  
2 protective factors may be flawed for that reason?

3 A. It's certainly a possibility, yes.

4 Q. And in your opinion, in fact, that's true?

5 A. I believe, in my opinion, that protective factors, as I  
6 indicated this morning -- for example, relapse, prevention,  
7 strategies, and risk prevention strategies -- are a very  
8 important part of risk assessment. So, yes, I believe that is  
9 true.

10 Q. So whether one is surrounded and supported by loved ones  
11 when they're released, that can make a difference?

12 A. It can.

13 Q. Whether someone has adequate housing, that can make a  
14 difference?

15 A. Yes.

16 Q. Whether someone is willing to seek a psychiatrist that  
17 they trust, that can make a difference?

18 A. Yes.

19 Q. Whether they're willing to be compliant with medications,  
20 that can make a difference?

21 A. Yes.

22 Q. And you've said that something like age or whether someone  
23 has suffered a medical incident like Mr. Mahoney's heart  
24 attack, is that something that you'd call a protective factor?

25 A. In general I would, but not in Mr. Mahoney's case, as he

1 has continued to engage in violent behavior since the heart  
2 attack, so I don't believe that would -- I wouldn't identify  
3 that as a protective factor in his particular case.

4 Q. And what's the most recent serious felony that he's  
5 committed in the past ten years?

6 A. The most recent serious felony?

7 Q. Correct.

8 A. I'm not aware of what the most recent serious felony is.  
9 I know that he's engaged in a number of violent offenses while  
10 in custody that if he were in the community would have resulted  
11 in criminal charges.

12 THE COURT: Why do you say it has to be a felony?  
13 It's just physical harm, right?

14 MR. SCHNEIDER: Under the standard, that's true. I  
15 was asking a more narrow question.

16 Q. Now, with respect to the scoring of the VRAG, you scored  
17 Mr. Mahoney at 15, correct?

18 A. That was the score that was the result of my assessment,  
19 yes.

20 Q. And that assigned him a Category 7?

21 A. That's right.

22 Q. How many other categories are there?

23 A. There are, I believe, nine categories on the VRAG.

24 Q. And in principle, one can score as high as a 38 on the  
25 VRAG?

1 A. Yes, one can score as high as a 38.

2 Q. And Mr. Mahoney scored a 15?

3 A. That's right.

4 Q. And that 15 includes four points for having scored  
5 positively on the Hare Psychotherapy Checklist-Revised,  
6 correct?

7 A. Correct. Well, that would be based on the score he  
8 received.

9 Q. Yes.

10 A. Yes.

11 Q. And it also includes three points for any personality  
12 disorder?

13 A. That's correct.

14 Q. By the way, it's fair to say that since both the HCR-20  
15 and the VRAG both rely on the scoring in the PCL-R, that  
16 there's some duplication amongst these instruments?

17 A. There is some overlap, yes.

18 Q. So seven of Mr. Mahoney's 15 points came from the scoring  
19 on the PCL-R and the fact that he has a personality disorder;  
20 to wit, in your view, antisocial personality disorder?

21 A. That's correct.

22 Q. Now, in your report you indicated, and I think you  
23 testified to it this morning, that the population data set that  
24 was used to generate the VRAG, that 55 percent in that category  
25 reoffended violently within seven years, correct?

1 A. Correct.

2 Q. And 64 percent reoffended violently within ten years?

3 A. Correct.

4 Q. Now, if my numbers are right -- and math is not my strong  
5 point -- that means that 45 percent did not reoffend violently  
6 within seven years?

7 A. That's correct.

8 Q. And it means that 36 percent did not reoffend violently  
9 within ten years?

10 A. Yes.

11 Q. That's not an insubstantial error rate, is it?

12 A. Well, that's not really the error rate. What that's  
13 saying is, in that group, these are the numbers that  
14 reoffended. It's not error. It's just a fact that with that  
15 score, this is the number of people who reoffended within that  
16 period of time.

17 Q. But it does provide us some information about the  
18 predictive validity of these kinds of instruments?

19 A. What it provides is the fact that among the individuals  
20 who were given the VRAG and followed over that period of time,  
21 55 percent of them reoffended within an average of seven years  
22 and 64 percent within ten years. You know, the purpose of  
23 using this instrument is to provide additional information to  
24 the decision-maker, and whether or not that information is felt  
25 to be persuasive or not would be based on the reading of that

1 data. That's what it says. I'm not sure that it says anything  
2 about predictive validity.

3 Q. But you wouldn't rely on these instruments to predict  
4 whether Mr. Mahoney is likely to reoffend within seven or ten  
5 years?

6 A. No. It's one piece of information that informs my opinion  
7 about his level of risk.

8 Q. And you're aware that there are meta-analytic studies with  
9 respect to instruments like the VRAG and the HCR?

10 A. Yes.

11 Q. And you gave us some information this morning about the  
12 reporter operating condition and the area under the curve as  
13 measures of the validity of these instruments?

14 A. Receiver operating characteristics --

15 Q. Excuse me.

16 A. -- but, yes.

17 Q. And another measure of the predictive validity of an  
18 instrument is the correlation coefficient?

19 A. That's true, although that's rarely used in a risk  
20 assessment area, primarily because of how influenced it can be  
21 by base rate of violent behavior. The vast majority of  
22 research in this area utilizes area under the curve and  
23 receiver operating characteristics.

24 THE COURT: Can I just say, the two of you are maybe  
25 talking with each other with some level of comprehension. I

1 don't know what you're talking about. So if this is important  
2 to me, you're going to have to cycle back and go in baby steps.

3 MR. SCHNEIDER: You know, I think most of this will be  
4 through Dr. Kriegman who will explain it.

5 THE COURT: Okay.

6 MR. SCHNEIDER: He's my expert, not me.

7 Q. But, in any event, these things are not designed to  
8 predict with any kind of specificity whether someone is going  
9 to go out and violently recidivate within a period of time?

10 A. No. You can't transfer that specific score over to any  
11 particular individual.

12 THE COURT: So why do I even need these? Judges make  
13 decisions all the time; risk of flight, risk of danger on a  
14 bail, that kind of thing. Are these instruments critical to  
15 your point of view?

16 THE WITNESS: No, they are not. They are a means of  
17 organizing information that relates to different characteristics  
18 of individuals who engage in violent behavior. What's important  
19 are those predictive factors, not the instruments themselves.  
20 What's important are things like history of violence, history  
21 of failure to follow treatment recommendations, conditional  
22 release violations, supervised release violations. The  
23 instruments are simply a way to organize that information and  
24 provide further information as it relates to overall risk, but  
25 you can talk about risk factors without talking about the

1 instruments.

2 Q. Have you or anyone on your team made any efforts to  
3 contact Mr. Mahoney's family?

4 A. I don't believe I've ever spoken with anyone from  
5 Mr. Mahoney's family, no.

6 Q. Did you ever speak with his daughter Jessica?

7 A. No, I didn't.

8 Q. Did you ever make personal phone contact with the folks at  
9 Avis Goodwin Mental Health Center up in New Hampshire?

10 A. No. We contacted them and asked for their records, but I  
11 never spoke to anyone there.

12 Q. Did you ever work with Mr. Mahoney on any kind of a  
13 release plan?

14 A. No, because we've never been in a position that a release  
15 plan would have been on the table.

16 Q. So based on your opinion of that, you didn't even make any  
17 efforts to begin putting together a release plan for him?

18 A. No. We wouldn't put together a release plan until he was  
19 civilly committed.

20 Q. That's your requirement?

21 A. Yes.

22 Q. So you haven't made any calls to any kind of residential  
23 group homes or halfway houses, or whatever it is that you're  
24 able to send someone to if they're in the BOP system?

25 A. That's correct.

1 Q. In your opinion, what is the likelihood that if  
2 Mr. Mahoney is actually civilly committed, that he's likely to  
3 be released anytime in the near future, in your view?

4 A. Well, that depends entirely upon his behavior and his  
5 willingness to comply with treatment. I think, if he were to  
6 comply with treatment and not engage in threatening or violent  
7 behavior, that he would be a good candidate for release.

8 Q. So it's your opinion that he could end up staying at a  
9 place like Devens for a long period of time?

10 THE COURT: Well, let me ask you this: If he went on  
11 the lithium and that worked and he wasn't violent for six  
12 months or a year, what happens?

13 THE WITNESS: In that situation, I imagine we would  
14 recommend him for conditional release, and we would begin  
15 working on a conditional release plan.

16 Q. And, in your opinion, is that likely to happen?

17 A. It depends entirely on Mr. Mahoney. Up until this point,  
18 he has not done those things, although he also has not been  
19 civilly committed; and the impact that that may have on his  
20 willingness to take other medications and resist engaging in  
21 disruptive or violent behavior may change. I don't think he's  
22 a long way away from being appropriate for conditional release.  
23 I think there are a few things -- those two things in  
24 particular would, if those were put in place, I think he'd be a  
25 good candidate.

1 Q. The two things are?

2 A. The two things would be that he refrain from engaging in  
3 any type of violent or threatening behavior and be compliant  
4 with the medication that decreased his hypomanic symptoms.

5 Q. And for you that's lithium?

6 A. No, that's not my opinion. As I said, I'm not qualified  
7 to say what medication it would be. I believe he needs an  
8 additional medication, but whether or not it's lithium would be  
9 an issue for his psychiatrist to make.

10 MR. SCHNEIDER: May I just have one moment, your  
11 Honor.

12 (Discussion between Mr. Schneider and the respondent.)

13 MR. SCHNEIDER: Thank you, your Honor.

14 MR. CALLAHAN: Redirect, your Honor?

15 REDIRECT EXAMINATION BY MR. CALLAHAN:

16 Q. Dr. Channell, at the beginning you were asked about  
17 updating or the fact that your last report, your most recent  
18 report was from December, 2013. Were you prepared to offer  
19 your opinion last summer in August, 2013, regarding  
20 Mr. Mahoney's meeting the criteria under 4246?

21 A. Yes. I've been prepared to offer my opinion since we  
22 filed the certificate of dangerousness.

23 Q. And there were a number of continuances that were  
24 necessitated by Mr. Mahoney's changes in counsel and his  
25 difficulties with counsel, correct?

1 A. Yes.

2 Q. And in December you filed -- you submitted a new report,  
3 correct?

4 A. That's correct, yes.

5 Q. And since that time, have you been keeping up on  
6 Mr. Mahoney's progress, whether it be from speaking with people  
7 at Devens who treat him or participating in rounds where his  
8 care is discussed?

9 A. Yes.

10 Q. Would your opinion today be the same regarding  
11 Mr. Mahoney's mental disease and defect causing substantial  
12 risk of bodily harm to another even if you'd never seen a  
13 letter that was referred to, which I won't get into the  
14 substance of, but a letter that was referred to earlier?

15 A. Yes. I had offered my opinion long before I ever saw that  
16 letter.

17 Q. Earlier you were talking about -- there was a suggestion  
18 that Mr. Mahoney's age with some of these instruments, his age  
19 might have a downgrading effect on what his score would be. Do  
20 you recall that testimony?

21 A. Yes.

22 Q. Is there research out there that describes that effect  
23 that age has on someone's risk for future violent offenses?

24 A. Yes. In general, research suggests that as individuals  
25 age, they become less violent.

1 Q. And when you take that research and you look at  
2 Mr. Mahoney's situation, what do you take away from that?

3 A. Well, I think what you can take away from it is the fact  
4 that he's continued despite his advanced age to engage in  
5 violent behavior with regularity over the past several years.  
6 So I don't believe it applies in this particular case. As we  
7 talked about earlier, you know, group data may not always apply  
8 to an individual; and in Mr. Mahoney's case, I don't believe  
9 that his age is a protective factor with regard to his risk for  
10 violence.

11 Q. There was also a lengthy discussion on your  
12 cross-examination about the criminal history, Mr. Mahoney's  
13 criminal history, and Page 18 of your initial report describing  
14 the weapons charges. Do you recall that?

15 A. Yes.

16 Q. Now, Dr. Channell, you go through at some length his  
17 criminal history in the body of your report, do you not?

18 A. Yes. There is a criminal history section earlier in the  
19 report.

20 Q. Okay. And anywhere in that section, the criminal history  
21 section, which I imagine, is that what you relied on in  
22 arriving at your conclusion?

23 A. Yes, it is.

24 Q. In anywhere there, is there a discussion of firearms  
25 charges against Mr. Mahoney?

1 A. No, there isn't.

2 Q. Okay. In the body of that, is there discussion about  
3 offenses, convictions Mr. Mahoney had where a knife and pliers  
4 were used?

5 A. Yes.

6 Q. And the only place that this, outside of the body of your  
7 report, the only place where the weapons charges are described  
8 are in the last paragraph, Page 18; is that correct?

9 A. Well, the third paragraph, but, yes.

10 Q. I'm sorry, the third paragraph. Was that a scrivener's  
11 error?

12 A. I believe that was an error of probably something that had  
13 been in a prior report which was transcribed over to this  
14 report.

15 Q. There was also reference to an incident from January 20,  
16 2013, about the incident between Mr. Mahoney and Mr. Dunston in  
17 the dish room. Do you recall that?

18 A. Yes.

19 Q. There was some suggestion by Mr. Schneider, if you turn to  
20 Exhibit 9, that during that incident or something that  
21 precipitated that incident was Mr. Mahoney being bumped in some  
22 way in the dish room. Do you recall that?

23 A. Yes.

24 Q. If you look at this investigative report at Exhibit 9,  
25 Mr. Mahoney was allowed to give his version, right, the

1 assailant's statements on Bates No. 126, Exhibit 9, correct?

2 A. Correct.

3 Q. Can you read what Mr. Mahoney said.

4 THE COURT: What tab are we?

5 MR. CALLAHAN: This is Exhibit 9, your Honor. It's  
6 the third page, Bates No. 126.

7 A. He said, "Me and Dunston, an argument in the dish room.  
8 He was being bossy, and we started arguing. Inmate Mahoney was  
9 asked additional questions about the incident but refused to  
10 answer."

11 Q. So contrary to the suggestion by Mr. Schneider, there's no  
12 indication anywhere in this incident report that there was any  
13 bumping by anyone other than Mr. Mahoney, correct?

14 A. Well, yeah, I didn't see anything that said Mr. Mahoney  
15 bumped him. What it said is that he grabbed him around the  
16 neck and throat and threw a bucket of water on him.

17 Q. Right, and there's no indication that Mr. Dunston first  
18 bumped into Mr. Mahoney. There was just an argument, correct?

19 A. Right, yes.

20 Q. There was some discussion earlier also about what you call  
21 "criminal versatility," and I think that came up in connection  
22 with the discussion of the PCL-R?

23 A. That's right.

24 Q. And you were asked a number of questions about, well, what  
25 about these charges, these weapons charges and gun charges that

1 are described in the third paragraph in the last page of your  
2 report, that has to undermine your criminal versatility  
3 analysis? Do you remember that?

4 A. I remember being asked those questions. I don't remember  
5 anything specifically being said about it undermining it,  
6 but --

7 Q. Can you describe to us what criminal versatility means.

8 A. Criminal versatility would be a wide variety of different  
9 types of offenses. And the way it's defined by the PCL-R are  
10 weapons-related offenses, not firearms versus pliers or knives  
11 or those types of things. So the fact that those firearm-related  
12 charges were erroneous would not have changed his score on the  
13 criminal versatility item. He still exhibits criminal  
14 versatility even without the firearms-related offenses.

15 Q. So looking at the PCL-R work sheet, Defense Exhibit 3, you  
16 would still have a 2 there; is that correct?

17 A. That's correct.

18 Q. And that would be based on what types of convictions from  
19 his criminal record?

20 A. It would be based on -- basically the way the PCL-R would  
21 identify that would be to identify different classes of  
22 offenses, and you would look at whether or not the individual  
23 had a number of offenses across a broad variety of different  
24 types of offenses. So, for example, if all an individual ever  
25 had were breaking-and-entering charges, they wouldn't have a

1 criminal versatility score. It's individuals who would have  
2 breaking and entering and violent-related offenses and  
3 weapons-related offenses and property offenses, those different  
4 types of things. So you can look at Mr. Mahoney's criminal  
5 record and see that he, you know, he has charges that include  
6 the assault and batteries that we've already mentioned. We  
7 have the larceny convictions, breaking and entering at night  
8 convictions, knowingly receiving stolen property, misuse of a  
9 credit card, uttering a forged instrument. There's a broad  
10 variety of different types of offenses. I won't go through all  
11 of them, but those are examples of the different types of  
12 offenses that he's had at one point in time or another.

13 Q. You also know when you initially filled this out that --  
14 you explicitly brought to the attention of whoever was reading  
15 the report that there were symptoms that he didn't exhibit,  
16 correct?

17 A. That's correct.

18 Q. And one of those was conning or being manipulative,  
19 correct?

20 A. That's correct.

21 Q. And since you filled this out, you've also become aware of  
22 the call that he had with the woman on the phone on May 28,  
23 2014. Would that affect your scoring of the PCL-R with respect  
24 to conning and manipulating?

25 MR. SCHNEIDER: I would just renew my objection, your

1 Honor.

2 THE COURT: Overruled.

3 A. Yes, I believe it would.

4 Q. And I want to take you to that. Would the statement -- if  
5 you look at Page 5 and 6 of Exhibit 20, which is the transcript  
6 of the call, when Mr. Mahoney is told at the bottom of Page 5,  
7 "Well, no, no, because what I'm trying to tell you is, you  
8 know, you can't actually live here.

9 "MAHONEY: Right. Well, I'm going to --

10 "FEMALE: I mean, you --

11 "MAHONEY: I'm going to live there for the time being just  
12 to get temporary, and then I'm going to get to another place or  
13 something, whatever I got to do just to get out. I live here  
14 with you. That's all you have to say when you get there,  
15 right? When the doctor calls to say I'm living there."

16 How does that inform your opinion with respect to the  
17 conning and manipulative factor on the PCL-R?

18 A. Well, I believe what I take away from that is the idea  
19 that the intention is to convince the doctor that he will be  
20 living there, even though he won't be living there, which is  
21 certainly an attempt to con, to use that word, that individual.

22 Q. And just more generally with the PCL-R, again, you're not  
23 of the view that this is a risk assessment tool in and of  
24 itself, correct?

25 A. That's correct.

1 Q. And the PCL-R, while it is used in the VRAG and the  
2 HCR-20, it's only used based on the score of the PCL-R,  
3 correct?

4 A. Correct.

5 Q. So if a person gets a low score on the PCL-R, it's  
6 factored in in a manner that is low on the VRAG and on the  
7 HCR-20, correct?

8 A. Yes.

9 Q. And if he got a high score, over 30, over that cutoff, he  
10 would be attributed with a high score on the VRAG or a high  
11 score on the HCR-20, correct?

12 A. Well, for that particular item, I mean, the difference  
13 between a high score and a low score would be zero or 2. So  
14 the score would, for example, in his case on the HCR-20, his  
15 score on the PCL-R resulted in a score of 1. If it were  
16 higher, it could potentially result in a score of 2. If it  
17 were lower, it could potentially result in a score of zero.

18 Q. So you didn't score the HCR-20 and the VRAG, you didn't  
19 score it as though he was a psychopath and got 30 or above,  
20 correct?

21 A. That's correct.

22 Q. Is it the fact that you took into account that he got a  
23 score that was below that, but that still informs the VRAG and  
24 it still informs the HCR-20 to the extent of the score on the  
25 PCL-R?

1 A. Correct.

2 MR. CALLAHAN: Your Honor, I have nothing further at  
3 this time. Oh, I actually do have one more question. I  
4 apologize.

5 Q. Dr. Channell, was there a reason that you used both the  
6 HCR-20 and the VRAG instead of just using one or the other  
7 exclusively?

8 A. Yes. The reason was that the HCR-20 includes the current  
9 clinical presentation as well as the release conditions that  
10 could be put in place. So the fact that it includes these  
11 dynamic changeable factors I believe is important to a risk  
12 assessment, and those are not captured in the VRAG and only in  
13 the HCR-20.

14 MR. CALLAHAN: Thank you, Dr. Channell.

15 MR. SCHNEIDER: I just have a couple of questions, and  
16 I think I mean it.

17 RECROSS-EXAMINATION BY MR. SCHNEIDER:

18 Q. Mr. Callahan just asked you about the fact that your  
19 report of May 30, 2013, incorrectly stated that Mr. Mahoney had  
20 had firearms charges, loaded weapons charges on his criminal  
21 record, and he was asking you whether or not that was simply  
22 nearly a scrivener's error or something that was somehow just  
23 left over from previous reports, right?

24 A. Correct, yes.

25 Q. Well, it's fair to say that your January 16, 2013 report

1 actually didn't include any information about there being  
2 firearms or loaded weapons on Mr. Mahoney's record?

3 A. That's correct.

4 Q. So it's still your position it was simply a scrivener's  
5 error?

6 A. Yes, because when I wrote the second report, I did not  
7 include those charges because it was an error in the first  
8 report.

9 Q. But when you included it in the May 30 report -- and  
10 that's the one on which Warden Grondolsky issued his  
11 certificate of dangerousness to this Court -- it indicated in  
12 the third paragraph of the last page in the Opinions and  
13 Recommendations section that there were weapons-related  
14 offenses, including these firearms-related offenses?

15 A. Yes.

16 Q. In some ways the most important part of the entire report?

17 MR. CALLAHAN: Objection.

18 THE COURT: Overruled.

19 A. I believe all the parts of the report are equally  
20 important. The ultimate opinion in the last paragraph is  
21 probably the page a lot of people flip to before they read the  
22 rest of the report, but I think it's all important information.

23 Q. Now, you've had a chance to -- and Mr. Callahan asked you  
24 about the phone transcript allegedly between Mr. Mahoney and an  
25 unidentified woman asking whether she would say that she's

1 willing to give him a place to stay, if released, right?

2 A. Yes.

3 Q. And Mr. Callahan was asking you whether or not looking at  
4 an early part in the transcript -- I think it's Page 5 --

5 A. I'm sorry, I'm not on that tab anymore. Could you --

6 Q. Yes, the top of Page 6.

7 A. What tab is it?

8 Q. It's 20, I believe. So he had you refer to a section  
9 where Mr. Mahoney is saying that he really wants to get out,  
10 and, you know, "I really want to live there, at least  
11 temporarily," and then going to get another place, right,  
12 essentially?

13 A. That's what he says, yes.

14 Q. Yes. And he says, and when the doctor calls, to say that  
15 he's living there, right?

16 A. Yes.

17 Q. And Mr. Callahan was trying to suggest that this somehow  
18 seemed conning and manipulative to do, right?

19 A. I believe he asked me if I thought that was conning and  
20 manipulative, and I said I did, yes.

21 Q. Yes. But, now, when you read through the rest of this  
22 transcript carefully, you realize that what you have is  
23 Mr. Mahoney actually trying to persuade this woman to let him  
24 actually stay there for a period of time?

25 A. Well, I listened to the call, and what I heard when I

1 listened to the call was her saying to him, "You cannot live  
2 here," and him saying, "Well, okay, but you need to let the  
3 doctor know that I'm going to live there."

4 Q. And toward the end on Page 15, for example, he ultimately  
5 says to her, "So if I have to stay a little while there, I'll  
6 leave early in the morning, come back late at night or  
7 something like that, you know what I mean, just so I'll have a  
8 place to stay, all right?" And she says, "All right, okay."

9 A. Yeah, I wouldn't characterize leaving early in the morning  
10 and, you know, sleeping on the floor there at night as a place  
11 to live. That is just a place to sleep.

12 Q. Well, it's a place to sleep as a way to start the process  
13 of getting reintegrated back into the community?

14 A. I would describe that as a pretty bad way to start  
15 reintegrating to the community, but if that's how you read  
16 that --

17 Q. Well, no one has made any calls to try to help him locate  
18 a residential facility.

19 A. Is that a question?

20 Q. Yes.

21 A. No one at Devens has made any calls. I don't know whether  
22 you've made calls or anyone from your office has made calls.

23 MR. SCHNEIDER: I have no further questions, your  
24 Honor.

25 THE COURT: All right, thank you very much.

1 THE WITNESS: You're welcome. Thank you  
2 (Witness excused.)

3 THE COURT: All right, so procedurally we're going to  
4 come back here on the 9th unless that event occurs, in which  
5 case I'll have to reschedule. What do you anticipate having  
6 happen, Mr. Callahan, at this point? Will you be resting, or  
7 are you putting on more evidence?

8 MR. CALLAHAN: I believe we'll be resting, your Honor.

9 THE COURT: All right. And then from your point of  
10 view, you're going to be putting on Dr. Kriegman?

11 MR. SCHNEIDER: Yes. He's my only witness.

12 THE COURT: And that's going to be the challenge to  
13 the instruments as well as his opinion?

14 MR. SCHNEIDER: Correct, that's correct.

15 THE COURT: Now, that gives you a little spare time.  
16 Will you be rebutting at all with respect to -- I'm going to  
17 sort of merge it with the *Daubert* situation.

18 MR. CALLAHAN: Your Honor, in the motion we described,  
19 we had asked for weeks to be able to do that. I think we've  
20 asked for four. I understand your reluctance to provide that,  
21 but a lot of time went into their *Daubert* challenge; and  
22 Dr. Channell, if the motion is going to be considered, he would  
23 have to do a literature search and a number of things to get up  
24 to speed.

25 THE COURT: Would Dr. Channell be your rebuttal

1 witness on the *Daubert*?

2 MR. CALLAHAN: I believe at this point he would, your  
3 Honor, but there is also -- I do have to consult with agency  
4 counsel before I commit him to that.

5 THE COURT: Because there might be somebody else who  
6 would do the *Daubert* piece of it?

7 MR. CALLAHAN: It could be. I'd have to ask them,  
8 your Honor. And I apologize not to have an answer now, but we  
9 didn't know where it stood.

10 THE COURT: All right. Well, I promised you that I  
11 would give you time to respond to the *Daubert* challenge, so if  
12 that's what you need. What I'm hearing you say to me is, it's  
13 unlikely you're going to have a witness on on the 9th.

14 MR. CALLAHAN: To address the specific issues? I  
15 mean, I think Dr. Channell has described the validity and, you  
16 know, the research underlying these tests.

17 THE COURT: What is Dr. Kriegman -- I haven't really  
18 spent as much time on the *Daubert* end as on the merits --  
19 what's he going to say? Is there literature to say that  
20 they're not predictive?

21 MR. SCHNEIDER: Yes. So he makes a distinction  
22 between the scientific -- that they're scientifically or  
23 statistically significant, but that they have really quite low  
24 predictive validity, really quite low.

25 THE COURT: So he would disagree with the .7 analysis?

1 MR. SCHNEIDER: Well, so that area under the curve can  
2 also be translated into something called the "correlation  
3 coefficient." I didn't take college stats and I wish I had,  
4 but that number, the correlation coefficient, or R, for these  
5 instruments is somewhere in the neighborhood of .034, maybe as  
6 high as .05-ish. But the problem with that is that when you  
7 also then take that number and square it, which is known as the  
8 percent of the variance, that is the actual statistical number  
9 that comes closest to giving you an accurate measure. It's an  
10 alternative way of describing the statistical information to  
11 the receiver operating curve and the area under the curve --

12 THE COURT: I have no idea what you just said, okay?  
13 So I'm going to just sort of flat out say that. So he's going  
14 to have to teach me. We did a little bit of this when I saw  
15 the Static-99. I mean, it's ringing a bell. But I guess, at  
16 the end of the day, regardless of these instruments, that's  
17 sort of what I did in these other cases. I mean, I have to  
18 make an assessment, and it's something that I make all the  
19 time: I look at someone's past, and I view it as predictive of  
20 the future. And I listen to two psychiatrists, and it's clear  
21 he's got a psychiatric disease or defect. No one's denying  
22 that. And it's clear he can't go to New Hampshire. So what's  
23 left is, does he have a substantial risk of causing bodily  
24 injury or property damage to another, focusing on bodily  
25 injury, you know? I don't think the property is as big a

1 focus.

2 MR. CALLAHAN: I mean, I think we've been focusing on  
3 the bodily injury.

4 THE COURT: Yes, maybe some property but --

5 So at some level, it sounds as if a full-blown *Daubert*  
6 hearing would not be resolved on the 9th.

7 MR. SCHNEIDER: If I may, your Honor, even though  
8 these concepts sound really complicated, it actually may not  
9 be, and --

10 THE COURT: Maybe.

11 MR. SCHNEIDER: Dr. Kriegman has an affidavit to which  
12 he has basically a didactic attachment. It's really -- I had  
13 him do it in that format just to simplify --

14 THE COURT: All right, maybe if I read that, but I'm  
15 just saying, I am going to give the government time to rebut  
16 it.

17 MR. SCHNEIDER: Understood.

18 THE COURT: And also I have to write it up if it's  
19 complex that way. I have to understand it.

20 MR. SCHNEIDER: Sure.

21 THE COURT: And it takes a while. I just want to make  
22 sure that everybody is on the same page on timeline. I don't  
23 know whether you're planning on just preparing a rebuttal with  
24 an affidavit on the record or you'd want to call someone back,  
25 but I don't think we have to reach that milestone now.

1 MR. CALLAHAN: Just to make sure we understand what  
2 you'd be expecting on Monday, your Honor, that Dr. Kriegman  
3 would provide testimony, we would cross him --

4 THE COURT: On everything. In other words, I'm not  
5 going to bring Kriegman back a second time. And then to the  
6 extent that you feel as if you need to put on a rebuttal  
7 expert, fair game, because typically we've all -- I mean, I  
8 don't know if you have, but most people have done a *Daubert*  
9 hearing before. You typically have to put on the peer-reviewed  
10 literature. It's not whether I -- it's whether it's generally  
11 accepted in the field; and if it is generally accepted in the  
12 field, what's it generally accepted for and that sort of thing?

13 MR. CALLAHAN: Understood, your Honor.

14 THE COURT: And, as I understand it, if for some  
15 reason you decide to bring in any lay witnesses, either one,  
16 you should just give one another notice. Like, you're not  
17 bringing in the family members, are you?

18 MR. SCHNEIDER: No. I think we're content with the  
19 way this is.

20 THE COURT: And you're not bringing in the inmate?

21 MR. CALLAHAN: We're not, your Honor.

22 THE COURT: All right, so that's it. So it's the two  
23 experts dueling. And then I will give you an opportunity,  
24 whether it's a month or whatever, to research or rebuttal. But  
25 I don't want to bring back Dr. Kriegman a second time, so

1       whatever cross you do is going to have to be done, okay?

2               MR. SCHNEIDER: And, of course, for what it's worth,  
3       your Honor, I know your Honor is mindful of the fact that  
4       Mr. Mahoney is sitting in custody now 43 months.

5               THE COURT: I get that, but I also only just got it  
6       myself, and we had a switch in attorneys. And I'm very  
7       appreciative that you took it, but it took you a while to get  
8       prepared. So fair enough, but I can only move so fast too.  
9       I've got to understand the coefficient correlation and the R  
10      squared and the other statistical issues. All right?

11              MR. CALLAHAN: Can I ask one housekeeping matter, your  
12      Honor?

13              THE COURT: Yes.

14              MR. CALLAHAN: The audio of the transcript that is at  
15      Exhibit 20 I'd like to move in as an exhibit. It is the actual  
16      call. Just for the record, can I mark that also as Exhibit 20?  
17      Should I mark it separately?

18              THE COURT: Sure, sure.

19              THE CLERK: 22 is the last number.

20              MR. CALLAHAN: Yes 22 is the last number, so it would  
21      be 23. Thank you.

22              (Exhibit 23 received in evidence.)

23              MR. CALLAHAN: So barring an issue that I have on the  
24      conflict that I flagged for you, it should be 10:00 o'clock on  
25      9th. And I'm blocking the morning for you, but do you think it

1 needs to go all day?

2 MR. CALLAHAN: Much of it will be dictated by how much  
3 Mr. Schneider does with Dr. Kriegman on direct.

4 MR. SCHNEIDER: My guess is that I think Dr. Kriegman  
5 can whip through it fairly quickly. I mean, you know, I  
6 think --

7 THE COURT: Put it this way: I would hope that you  
8 wouldn't on direct be much longer than a couple of hours.

9 MR. SCHNEIDER: I don't think I will be. I think it  
10 may be less than that.

11 THE COURT: Then see where it is on cross. It would  
12 be fabulous to finish in the morning, but if not, we may have a  
13 little time in the afternoon, but I also have other hearings.  
14 Okay, thank you.

15 MR. CALLAHAN: Thank you, your Honor.

16 MR. SCHNEIDER: Thank you.

17 (Adjourned, 4:03 p.m.)  
18  
19  
20  
21  
22  
23  
24  
25

C E R T I F I C A T E

UNITED STATES DISTRICT COURT )  
DISTRICT OF MASSACHUSETTS ) ss.  
CITY OF BOSTON )

I, Lee A. Marzilli, Official Federal Court Reporter,  
do hereby certify that the foregoing transcript, Pages 1  
through 200 inclusive, was recorded by me stenographically at  
the time and place aforesaid in Civil Action No. 13-11530-PBS,  
United States of America v. Brian Mahoney, and thereafter by me  
reduced to typewriting and is a true and accurate record of the  
proceedings.

Dated this 11th day of June, 2013.

/s/ Lee A. Marzilli

---

LEE A. MARZILLI, CRR  
OFFICIAL COURT REPORTER